BEFORE THE SPECIAL JUDGE :::::: DHUBRI

Special Case No.24/2015

U/s. 376 of IPC & Sec. 4 of POCSO Act, 2012

G.R 3415/2015

State of Assam

- Vs -

Jahur Uddin

Present : Sri Rajib Goswami, AJS

Special Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.

Sri Y.A. Bepari, Advocate for the defence.

Date of Evidence : 16-11-2015, 04-02-2016, 17-03-2016, 21-06-2016,

30-07-2016 & 11-08-2016

Argument Heard : 07-09-2016 Date of Judgment : 27-09-2016

JUDGMENT

The prosecution case in brief is that accused Jahur Uddin on the assurance of marriage to the minor sister of the informant had committed rape on her on several occasions. On 22-07-2015 at around 9 p.m. the accused was caught inside the house of the informant. The accused had promised to marry his sister on 26-07-2015. However, the accused having declined his earlier promise to marry the sister of the informant on 26-07-2015, the informant had filed the present case.

- 2. On receipt of the FIR by the I/c, Athani Outpost, same was forwarded to the O.C, Gauripur Police Station for registration of a case. The O.C, Gauripur Police Station registered the case vide Gauripur P.S. Case No.657/2015 u/s.456 of IPC, R/W Section 4 of POCSO Act against the accused Jahur Uddin. The case was investigated into by the I.O. and after completion of investigation, charge sheet against the accused Jahur Uddin u/s.456 of IPC, R/W Section 4 of POCSO Act.
- 3. Accused person appeared before the Court. Charges u/s.376 of IPC and Sec. 4 of POCSO Act had been framed against the accused. Charges had been read over, explained and interpreted to accused to which he pleaded not guilty and claimed to be tried.

4. The prosecution had examined as many as 7 (seven) witnesses including one C.W. Accused Jahur Uddin was examined generally on the circumstances coming up against him in the evidence of P.Ws u/s.313 of Cr.PC. The accused person pleaded total denial and declined to adduce any evidence in his defence.

5. <u>POINTS FOR DETERMINATION</u>

- 1. Whether the accused on 22-07-2015 at around 9:00 p.m. at village Patakata Pt-II under Gauripur P.S. committed rape on the victim?
- 2. Whether the accused on the same day time and place committed penetrative sexual assault on the minor sister of the informant?

DECISIONS AND REASONS THEREON

6. PW-1, Kader Ali is the brother of the victim and the accused Jahur Uddin is known to him. According to PW-1 the accused had illegally entered into their house and the accused had been detained at their house by his neighbours. He had informed the father of the accused who had come in the following morning at around 6 a.m. and immediately thereafter police had come and arrested the accused. The age of his sister was around 15 to 16 years at the relevant point of time. On being asked his sister told him that the accused had assured her of marriage and if she dared to disclose the matter to anyone, she would be killed. He had reported the case to the police. Ext-1 is the Ejahar bearing his signature ext-1 (1). The delay in the lodging the FIR was due to an attempt to bring about an amicable settlement at the sitting of the village elders.

In his cross-examination PW-1 had denied the M.O. doing any ossification test on his sister in order to ascertain her age. He also admitted not having furnished birth certificate of the victim to the police. He further admitted not being aware of his sister's relation with the accused. He also admitted to being a married man with his mother, wife and children living with him. According to PW-1 Akbor Ali, Sahidur Ali, Barek Ali and many others are his neighbours. PW-1 also admitted to seeing the accused for the 1st time on the

day of the alleged occurrence at his house. He denied the suggestion that he had not stated to the I.O. during interrogation he had not stated about seeing the accused at his house on his return from his work and police arresting him following morning at around 6 a.m.

7. PW-2, Musstt. Roshida Khatun, the victim had said that the accused wanted to marry her. In this regard she had received proposal for marriage and on several occasions she had been asked to elope with him. On the date of alleged occurrence in the night she was alone at her house. Her sister-in-law had gone to her parents' house. Accused came to her house and on seeing him she had gone to the house of her neighbour. Her brother in the meantime, had come back from his father'-in-laws house and having found accused inside his house, her brother had called the villagers. On the following morning accused was taken by the police to the police station. Police had also got her statement recorded u/s.164 of Cr.PC before the Magistrate. She had put her thumb impression in the statement.

In her cross-examination PW-2 had come up with a different story and had said that her brother and the accused had a heated altercation between them regarding cattle of the accused feeding on their crops causing damage to their crops.

8. PW-3, Md. Sahadulla, who is known to both accused and the victim was on his way back home from the daily market. Having arrived at his house, one Lal Chand had over phone requested him to come to the house of Kader. On his arrival he had seen a crowd of 15 to 20 persons present at the house of Kader. He had learnt that the accused Jahuruddin had been found at the house of Kader and heard that the accused had entered into the room of Rashida, the sister of Kader. He came to know that Jahurul had been detained at the house of Kader along with Rashida and it was decided to hold a "Salish" on the next day. Both accused and the victim had been placed in the custody of village elders. He had heard that no "Salish" had taken place and the case was reported to the police.

In his cross-examination PW-3 admitted to being the maternal uncle—in-law of the informant and a "beel" separating his house from the house of the informant. He had no personal knowledge about the alleged occurrence.

9. PW-4, Md. Jiaur Rahman is known to both the accused Jahanuddin and the victim Rashida Khatun. He had been informed by the brother of the Rashida Khatun to come to their house. Having arrived at the house of Rashida Khatun he had seen Jahanuddin being surrounded by a crowd. On being asked Jahanuddin had told him that he wanted to marry Rashida and Rashida had complained of Jahanuddin troubling her and about the accused illegally entered into her house. The father of the accused Jahanuddin had filed a case for wrongful confinement against the informant.

In his cross-examination he admitted not having told the I.O. about accused telling him that he loved Rashida and wanted to marry her. The victim's family comprise 5 members and all members had been present at the relevant point of time.

- 10. PW-5, Md. Shahidur Islam feigned ignorance about the alleged occurrence.
- 11. PW-6 ASI Shah Alom Azad had filed the charge sheet, ext-3 bearing his signature ext-3 (1). According to PW-6 the incident had taken place on 22-07-2015 and the case was reported to the police on 28-07-2015.

The attention of the I.O. having been brought to the statement of the PW-1 regarding PW-1 having informed the father of the accused and father of the accused coming to the house of the PW-1 following morning the PW-6 answered in the negative. PW-6 also denied having been told by PW-1 about the police coming to their house the following morning and arresting the accused. PW-6 had admitted not having seized the birth certificate of the victim or for that matter any school certificate.

11. C.W-1, Md. Rahul Amin Ahmed had stated that he was the Nench Assistant of J.M.FC Dhubri during the period commencing from 2014, January to 23rd June, 2016. He is acquainted with the signature of the then JMFC, Sri B. Kshetri. Ext-4 is the statement u/s. 164 of Cr.PC recorded by Sri B. Ksthetri, JMFC, Dhubri in his presence. Ext-4 (1) is the signature of Sri B. Kshetri which CW-1 had identified. Victim had also put her thumb impression in his presence on her statement.

In cross-examination CW-1 had said the thumb impression had been given by the victim in presence of one lady constable.

Above is the threadbare discussion on the evidence on record.

- 9. Having gone through the evidence on record I find that the minority of the victim has not been proved. The I.O. as PW-6 had admitted that he had not seized any school leaving certificate of the victim or for that matter the birth certificate of the victim. She had not been examined clinically for determination of age. Thus it is evident that apart from the evidence of PW-1 and PW-2, the informant and the victim that PW-2 is a minor. There is no evidence in support of the minority of the victim. Since PW-2 had not been crossexamined on her being a minor as in her evidence PW-2 had stated her age to be 14 years. Thus without any birth certificate or school leaving certificate, it will not be safe to hold the victim to be a minor on her verbal deposition. That apart, none of the ingredients constituting an offence of rape as provided in Section 375 of IPC has been proved. Neither the ingredients constituting the offence of penetrative sexual assault, section 4 of the POCSO Act, 2012 has been proved. In either offences the sexual intercourse without consent is necessary to bring home the charges u/s.376 of IPC and section 4 of the POCSO Act. The differences that one comes under the Special Act the other IPC. It is evident from the evidence of PWs above that accused had been caught inside the house of informant and from the evidence of PW-2, the victim that the accused had come to propose to her about marriage and on seeing the accused PW-2 had gone to the house of her neighbour. Thus it is clear that the prosecution has not been able to establish the charges u/s.376 of IPC and Sec. 4 of the POCSO Act beyond all reasonable doubt and as such the accused is entitled to benefit of doubt.
- 19. Thus summing up the discussion of the evidence of witnesses on the prosecution side, it is clear that prosecution has failed to establish the charges u/s.376 of IPC and Sec. 4 of the POCSO Act beyond all reasonable doubt against the accused. The accused is acquitted and set at liberty forthwith.

12. However, I am inclined to recommend the victim for compensation u/s.357 (A) of Cr.PC. The Secretary, DLSA, Dhubri to assess the quantum of compensation to be paid after due inquiry. The copy of the judgment be sent to the Secretary, DLSA, Dhubri.

Given under my hand and seal of the Court on this 27^{th} day of September, 2016.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.

APPENDIX

A. **Prosecution Witness.**

P.W-1 - Md. Kader Ali

P.W-2 - Musstt. Roshida Khatun

P.W-3 - Md. Sahadulla

P.W-4 - Md. Jiaur Rahman

PW-5 - Md. Sahidur Islam

PW-6 - ASI Shah Alom Azad

B. **Court Witness**

C.W-1 - Md. Rahul Amin Ahmed

C. **Defence Witness**

Nil

D. **Prosecution Exhibits.**

Ext-1 - FIR

Ext-2 - Sketch Map

Ext-3 - Charge Sheet

Ext-4 - Statement u/s.164 of Cr.P.C.

D. **Defence Exhibit**

Nil

Special Judge, Dhubri