IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon Present: Smti. B. Kshetry Special Judge, Kamrup, Amingaon Special Sessions (POCSO) case No.18/2016 U/S-376 (D) of IPC R/W Section 4 of POCSO Act, 2012 State of Assam -Versus-1. Sakim Uddin s/o-Lt. Kurpan Ali Resident of vill -No.3 Uttar Rangapani P.S.-Boko Dist- Kamrup 2. Sofiqul Islam s/o-Kazimuddin Resident of vill –No.3 Uttar Rangapani P.S.-Boko Dist- Kamrup -----Accused Appearance: -----for the State Mr. A.K. Baruah. Addl. Public Prosecutor Md. Mohir Uddin, Ld. Advocate -----for the accused Date of evidence: 18.01.2019, 15.02.2019, 16.03.2019

Date of Argument: 20.03.2019

Date of Judgment: 20.03.2019

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JUDGEMENT

- 1. The brief facts of the case is that on 17.12.15, complainant —Eleja Khatoon lodged an ejahar to the effect that on 11.12.15 at 10pm , accused persons—Sofiqul Islam and Sakim Uddin dragged her while she was sleeping in her home and they committed rape on her. They also threatened her with dire consequences. Hence, the case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 714/2015 U/S-376 (D) of IPC R/W section 8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused persons U/S-376 (D) of IPC R/W section 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 376 (D) of IPC R/W section 4 of the POCSO Act, 2012 against accused persons— Sofiqul Islam and Sakim Uddin. The aforesaid charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as five (5) numbers of witnesses including the informant/ victim. Statement of the accused persons U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against them.

5. **POINT FOR DETERMINATION**

- (I) Whether both the accused person on 11.12.2015 at about 10.00 p.m committed gang rape upon the victim girl and, thereby, committed an offence punishable U/S 376 (D) of IPC?
- (II) Whether both the accused persons on the same day, time and place committed penetrative sexual assault on the victim girl and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

6.

Perused the record. Prosecution examined 5 (five) witnesses. Let us go through the evidences available on record.

- P.W.1, Sohurrudin is brother of the victim/informant. He knows the accused person. He deposed that the victim was 14 years old at the relevant time. She was sleeping in her house with the niece while P.W.1 was sleeping in his own house. At 10.00 pm , he heard his mother –Sofia Khatun crying . She got up from the bed and told him that the victim is missing from the house. And they searched for her. After 15 mins , victim returned home. She told them that the accused persons-Hayet Ali, Sokimuddin and Sofikul entered the house by breaking the bamboo door and gagged her mouth and took her to the river side. Victim told them that the accused persons raped her and then left her and went away. Thereafter, victim gave the ejahar.
- 8. In his cross-examination, pw-1 stated that he did not see the incident . He was lying in the bed due to sickness. He denied that there was love affair between the victim and accused –Safikul.
- 9. Pw-2 Sufia Khatun is the mother of the victim / informant. She deposed that on the night of occurance, when she returned home , then she did not find the victim. She searched for the victim with her son (pw-1) . After an hour , victim returned home by herself . On enquiry , victim told her that the accused persons entered into the house by opening the bamboo door. They took her to the field and left her there as she shouted out. Pw-2 confirmed that the victim did not tell her that the accused persons did bad act with her.
- 10. In her cross-examination, pw-2 disclosed that the ejahar was lodged after one week of the incident. She disclosed that ejahar was given as advised by the village people after the village mel was held.
- 11. Pw-3 Elisa Khatun is the informant . She deposed that she does not know the accused persons . She disclosed that she does not know as to what is written in the ejahar . On being asked by the village people , she put her signature in it. She disclosed that the accused persons did not do any bad act with her . Pw-3 stated that she had

gone outside and was standing by the road side when her mother was searching for her. She revealed that she gave statement before the Magistrate and police as tutored by the village people . Ext-1 is the ejahar . Ext1 (1) is her signature. Ext-2 is her statement u/s 164 Crpc and Ext-2(1 &2) are her signatures. Now, pw-3 is married to another person.

- 12. In her cross-examination, Pw-3 revealed that she did not state anything about the incident to her elder brother (pw-1).
- 13. Pw-4 Asia Khatun and Pw-5 Jahanuddin did not know anything about the incident.
- 14. I have heard the arguments of both the sides. Perused the evidences on record.
- 15. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 16. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or

- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 17. Now, in this instant case, there is no allegation by the victim of any penetrative sexual assault or any kind of sexual assault upon her by the accused persons. The victim (P.W.3) made it clear in her evidence that the accused persons did not commit any penetrated sexual assault on her on the date of occurrence. No incident as alleged in the ejahar took place. Pw-3 stated that she had gone outside and was standing by the road side when her mother was searching for her. She revealed that she gave statement before the Magistrate and police as tutored by the village people. P.W.3 (victim) did not state before her brother (P.W.1) anything regarding the incident. P.W.2 made it clear that P.W. 3 (victim) did not tell her that the accused persons did bad act with her. The victim implicated the accused as tutored by the village people. So, the offence U/S- 4 of the POCSO Act is not at all attracted in this instant case.
- 18. Coming to Section 376 (D) IPC, it has come out clearly from the evidence of P.W.3 (victim) that the accused persons did not committed gang rape upon the victim girl. So, the offence U/S-376 (D) IPC is also not attracted in this case.
- 19. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused persons— Sofiqul Islam and Sakim Uddin. Accordingly, the accused persons are held not guilty and they are hereby acquitted of the offence U/S-376 (D) of IPC R/W Section 4 of the POCSO Act, and set at liberty forthwith.
- 20. Their bail bond stands cancelled. Bailor is discharged from the liabilities.
- 21. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 20th day of March, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Pw-1 Sohurrudin

Pw-2 Sufia Khatun

Pw-3 Elisa Khatun

Pw-4 Asia Khatun and

Pw-5 Jahanuddin

Prosecution Exhibit

Ext.1 is the ejahar.

Ext.2 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Special Judge, Kamrup, Amingaon