Present :- Shri J. Borah, AJS Special Judge Dhubri

SPECIAL CASE NO.13 OF 2019

Under Section 376(3) of Indian Penal Code
Under Section 4 of Protection of Children from Sexual Offences Act

State of Assam
Vs
Fazar Ali
....Accused Person.

Date of Framing Charge :- 21-02-2019

Dates of Recording Evidence :- 07-03-2019

18-03-2019

Date of Argument :- 20-03-2019

Date of Judgment :- 20-03-2019

Advocates Appeared:

For the State of Assam :- Shri S.C. Ray

Learned Addl.P.P.

For the Defence :- Shri Shahjahan Mollah

Learned Advocate.

J U D G M E N T

- 1. This case is under section 376(3) of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, so the name of the victim is not mentioned here and she is hereinafter referred to as 'X'.
- 2. The prosecution case, in brief, is that Momin Seikh, the informant lodged an ejahar with South Salmara Police Station on 3.9.018 informing that 'X' is his daughter aged about 12 & 1/2 years. She is deaf and dumb. On 17.7.018 at 10-00 A.M., the accused Fazar Ali took away 'X' from Segun Garden and he took her to his house. The accused Fazar Ali committed rape on 'X'.

So, the informant prayed for taking necessary action against the accused Fazar Ali.

- 3. The South Salmara Police Station received the ejahar and registered as South Salmara Police Station Case No.237/018 U/s.376(3) of Indian Penal Code, in short IPC., Read With Section 4 of Protection of Children from Sexual Offences Act, in short POCSO. The case was investigated and having found prima facie U/s.376(3) of I.P.C and Sec.4 of Protection of Children from Sexual Offences Act against the accused Fazar Ali, prepared chargesheet and laid the same before the court for trial.
- 4. The Hon'ble Special Judge, Dhubri received the case and transferred to this court for trial.
- 5. The accused Fazar Ali, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed U/s.376(3) I.P.C and U/s.4 of POCSO Act against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. The prosecution, in order to bring home the charge against the accused, examined 5(five) witnesses, namely --
 - 1. Momin Seikh PW-1
 - 2. Kamala Khatun PW-2
 - 3. X/the victim PW-3
 - 4. Sokina Khatun PW-4
 - 5. Monira Begum PW-5
- 7. The accused examined U/s.313 Cr.P.C and his statement was recorded where he denied all allegations levelled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.
- 8. Heard argument for both sides.
- 9. **POINTS FOR DETERMINATION**:

- (I) Whether the accused on 17.7.018 at 11-00 in the morning at village Kalabari under South Salmara Police Station committed rape on the daughter of the informant 'X' who is 15 years i.e under the age of sixteen years and thereby committed offence U/s.376(3) I.P.C.
- (ii) Whether the accused on 17.7.018 at 11-00 in the morning at village Kalabari under South Salmara Police Station committed penetrative sexual assault on the daughter of the informant 'X' and thereby committed offence U/s.4 of POCSO Act.

DECISION AND REASONS THEREOF:

- 10. In this prosecution case, PW-1 Momin Seikh is the informant, PW-2 Kamala Khatun is the wife of the informant PW-1, PW-3 'X' is the alleged victim, PW-4 Sakina Khatun and PW-5 Monira Begum are independent witnesses.
- 11. Now let us see the evidence available on record.

PW-1 Momin Seikh has stated in his evidence that he is the informant in this case. The occurrence took place 3/4 months ago. On the day of occurrence, he went for his work. When he returned to his house, his wife told him that the accused called 'X' and took to his house. Accordingly, he lodged the ejahar against the accused. He gave thumb impression on the ejahar.

In his cross, PW-1 has stated that the accused used to visit their house and 'X' also used to visit the house of the accused. He lodged the ejahar due to misunderstanding.

12. PW-2 Kamala Khatun has stated in her evidence that the occurrence took place 3/4 months ago. On the day of occurrence, the accused took 'X' to his house. When her husband got to know about it he lodged the ejahar against the accused.

In her cross, PW-2 has stated that the case was lodged only because of misunderstanding.

13. PW-3 'X' has stated in her evidence that informant is her father. The accused did not do anything against her. He only took her for walk. She gave her statement before the Magistrate, Ext-1 is the statement, Ext-1(1) is her signature.

Cross examined of PW-3 was declined by the defence.

14. PW-4 Sokina Khatun has stated in her evidence that the accused took 'X' to his house. But she did not know the rest.

Cross examination of PW-4 was declined by the defence.

15. PW-5 Monira Begum has stated stated in her evidence that the accused took 'X' to his house. She did not know the rest.

Cross examination of PW-5 was declined by the defence.

16. Thus, careful scrutiny of evidence of PW-1 to PW-5 shows that PW-1 Momin Seikh who is the informant has unequivocably has stated that he lodged the ejahar due to misunderstanding. The accused only took 'X' to his house and when he (PW-1) got to know about it he lodged the ejahar against the accused. PW-2 sternly denied to do any sexual intercourse on 'X' by the accused.

Same is the evidence of PW-3 'X', the alleged victim. She denied to do sexual intercourse on her by the accused. According to PW-3, she only went to the house of the accused with intent to visit his house. So, there found no incriminating evidence adduced by PW-3 against the accused.

17. PW-2 Kamala Khatun is the mother of PW-3 'X' who has stated in her plain language that the accused took her daughter, but he did not do anything on her.

Same is the evidence of PW-4 Sokina Khatun and PW-5 Monira Begum. Both PW-4 and PW-5 have stated in the same tune that the accused took 'X' to his house and except this they knew nothing. So, the evidence of PW-4 and PW-5 has no effective value.

- 18. Thus, the evidence as projected by prosecution is not sufficient and satisfactory to establish the offences as alleged against the accused. The prosecution evidence is found dearth of merit.
- 19. The prosecution has failed to prove it's case U/s.376(3) I.P.C and U/s.4 of POCSO Act against the accused beyond all reasonable doubt.
- 20. Held, the accused is not guilty U/s.376(3) I.P.C and U/s.4 of POCSO Act.
- 21. The accused is acquitted and set at liberty. The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal of the court on this $20^{\,\mathrm{th}}$ March, 2019.

Transcribed & Typed by

Special Judge, Dhubri.

Stenographer
Court of the Addl. Sessions Judge
Dhubri

APPENDIX

Prosecution Witnesses

PW-1 Momin Seikh

PW-2 Kamala Khatun

PW-3 X/the victim

PW-4 Sokina Khatun

PW-5 Monira Begum

DEFENCE WITNESS : Nil **Prosecution Exhibits** :

Ext-1 Statement of victim U/s.164 Cr.P.C.

Special Judge, Dhubri