IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present: Shri S. Das, A.J.S.,

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Sessions Judge,

Dhemaji,

JUDGMENT IN SESSIONS CASE NO. 49(DH) of 2016.

(G.R. Case No.155/2016, Gogamukh P.S. Case No.32/2016 Under Section 376 of the Indian Penal Code read with Section 4 of POCSO Act)

The State of Assam

- Versus –

Shri Someswar Borah,Accused Person

S/O Late Mohendra Borah,

R/O Sabham Gaon,

P.S. Merapani,

Dist.- Golaghat.

Committing Magistrate: Shri P. C. Kalita

Chief Judicial Magistrate,

Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri B. Gogoi, Advocate,

.....For the Accused

19/12/2017 19/12/2017 Date of prosecution evidence

: 19-12-2017.

Date of arguments

: 19-12-2017

Date of Judgment

: 19-12-2017

JUDGMENT

1. The prosecution case in brief is that on 25-02-2016 complainant- Shri Ranen Goyari S/o Late Abiram Goyari R/o. No. 2 Dhansripur, P.S.- Gogamukh, Dist-Dhemaji, lodged an ejahar with Gogamukh Police Station alleging inter alia that on 24-02-2016 at about 4:00 PM while his minor daughter- Smt. Priti Goyari @Anita Goyar, aged about 14 years, was alone at home the accused Shri Someswar Borah who is Jawan of 13th APBN of Panbari BOP, entered into his house and committed rape on her (victim). Hence, the case.

- 2. On receipt of the ejahar police registered a case vide Gogamukh P.S. Case No.32/2016 Under Section 376 of the Indian Penal Code read with Section 4 of POCSO Act. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Someswar Borah u/s 376 IPC read with section 4 of POCSO Act.
- 3. The case came up before the learned Chief Judicial Magistrate, Dhemaji and the Ld. Magistrate issued process for appearance of the accused and on appearance furnished necessary copies to the accused and committed the case to this Court.
- 4. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 376 of IPC read with sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The

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prosecution, in order to prove its case, examined 2 witnesses. Defence examined none. The examination of the accused u/s 313 Cr. PC. is dispensed with.

Points for determination:

- 5. That you, on or about the 24th day of February 2016 at about 4 PM inside the house of Shri Ramen Goyari committed rape on his minor daughter- Smt. Preeti Goyari @ Anita having sexual intercourse with her against her will and consent and thereby you committed an offence punishable u/s 376 of IPC.
- 6. That you, on the same date, place and time you committed penetrative sexual assault penetrating your penis into the vagina of Smt. Preeti Goyari @ Anita Goyari and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 7. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof:

8. PW1 Smt. Preeti Goyari @ Anita Goyari is the victim girl. She has stated that the complainant is her father. She knows the accused Shri Someswar Borah. The occurrence took place about one year back. The accused is an Army Jawan and he had his camp near their house at No. 2 Dhansripur. The accused used to visit their house and in this way he became acquainted with her parents. On the date of occurrence at the relevant time while the accused visited their house, the villagers suspected foul play and then gheroued their house and apprehended the accused. The villagers also put pressure upon her father to filed complaint against the accused. Accordingly, her father lodged complaint against the accused. The accused

19/12/2017

has never physically abused her nor he maintained any kind of intimate relationship with her.

9. PW2 Shri Ramen Goyari stated that he is the complainant of this case. Victim Preeti Goyari is his daughter. He knows accused Someswar Borah. The occurrence took place about one year back. The accused is an Army Jawan and he had his camp near their house at No. 2 Dhansripur. The accused used to visit their house and this way he became acquainted with him. On the date of occurrence at the relevant time while the accused visited their house, the villager suspected foul play and gheroud their house and apprehended the accused. The villagers also put pressure upon him to file complaint against the accused. Accordingly, he lodged complaint against the accused the accused has never physically abused her daughter nor he maintain any kind of intimate relationship with his daughter. Ext. 1 is the ejahar and Ext. 1 (1) is his signature.

In cross examination PW2 stated that he lodged complaint against the accused at the instance of the villagers. Now he does not want to proceed against the accused as he was not involved in the commission of the alleged offence.

- 10. From the evidence of the vital two witnesses i.e. PWs- 1 and 2, it is seen that they have not implicated the accused in commission of the alleged offences u/s 376 of IPC read with section 4 of the POCSO Act, 2012. Prosecution side has declined to examine the other remaining witnesses as their evidence will not improve the prosecution case at all.
- On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. I find that the prosecution has failed to prove the charges u/s 376 of IPC read with Section- 4 of POCSO Act against the accused.

Sessions Judge

- 12. In view of the above, I find the accused not guilty u/s 376 of IPC read with Sec. 4 of POCSO Act. Accordingly, he is acquitted of the charge leveled against him. Set him at liberty forthwith.
- 13. Judgment is pronounced in open Court.
- 14. Given under my hand and seal of this Court on this the 19th day of December, 2017.

(S. Das)

Dhemaji.