IN THE COURT OF SESSIONS JUDGECACHAR.

Spl POCSO 4 of 2015

(U/S.344 IPC and Sec 4 of POCSO Act)

Present:-Shri K. Choudhury, LL.M.
Sessions Judge,
Cachar, Silchar.

State of Assam	Complainant.
-Versus-	
Thumyhanghrim Hmar	
s/o Lt.Zokham Hmar	
Kukicherra, PS. Udharbond	Accused
Charge framed on:-	10/4/15
P.Ws.examined.on:28/4/15,19/05/15,21/5/15,18/6/15,4/7/15	
Statement of accused recorded under section 313 Ca	r.P.C :4/7/15
Argument heard on:	4/07/15
Judgment pronounced and delivered on:	4/07/15
Counsel Appeared:	
Advocate for the prosecution:-	Sri S. Dutta, ldP.P.,
Advocate for the accused:	Sri. D.H.Borbhuiya,Advocate.

JUDGMENT

- 1. Prosecution case in brief is that after the death of the husband of the complainant her minor daughter (herein after mentioned as victim) was given in the custody of the accused for her brought up. The accused is the elder brother of the husband of the complainant. When the daughter of the complainant attained the age of 17 the accused started to misbehave with her. Further prosecution case is that, the accused forcibly raped the victim and as a result she became pregnant. When the complainant tried to bring back the victim daughter, the accused having conspired with other FIR named two accused concealed and confined the victim. It is further alleged that the accused showing the victim as major and his wife applied for marriage registration. Knowing the same when the complainant lodged objection petition the accused persons threatened her with dire consequence. Accordingly FIR was lodged which was registered as Udharbond bearing number 214/14 u/s 344/506/34 IPC r.w. Section 6 of POCSO Act 2012.
- 2. During investigation the victim was recovered. She was medically examined. Her statement was also recorded u/s 164 Cr.P.C. She in her statement stated her age as 18 and also stated about the marriage with the accused out of her love affairs etc. and wanted to go back with the accused.
- 3. On completion of investigation I/O submitted charge sheet against the accused u/s 344 IPC r.w. Section 6 of POCSO Act 2012 only against the present accused. The ld. S.DJ.M., Cachar on production of the accused and furnishing copies of all the necessary police papers committed the offence. After hearing both sides and perusal of the materials on the

record I framed formal charge against the accused u/s 344 IPC and U/s 4 of POCSO Act 2012 of POCSO Act. The charges were read over and explained to which the accused pleaded not guilty. Hence, trial began.

4. To prove the case the prosecution examined as many as five witnesses including MO and IO. During recording of evidence the complainant stated about the compromise of the matter.

5. Point for determination is:

Whether the accused, under the facts and circumstances of this case, committed any offence as charged u/s 344 and Section 4 of POCSO ACT?

- 6. To decide the above point I have heard the ld. counsel of both sides. Perused the evidence on the record. My findings and decision with reasons are given below.
- 7. PW.1 is the complainant. She deposed that at the time of lodging of the ejhar her victim daughter was pregnant for about six months. On query the victim stated that the pregnancy was caused by the accused. She further deposed that during the period of pregnancy the victim was in the custody of the accused who is elder brother of her husband. After lodging of the ejhar the victim was recovered from the custody of the accused. Ext.1 is the Ejhar. In the cross examination she stated that she cannot write or read Bengali and can not say actually what is written in the ejhar. The persons who accompanied her at the time of filing ejhar took her signature. She further stated that she submitted compromise petition being Ext A along with birth certificate and other certificates of the victim with affidavit, the Ext.B. The victim was major at the time of the alleged incident. The victim gave birth of a female child.

- 8. PW.2 is the victim. She deposed that after the death of her father in her child hood she started to live with the accused, who brought up her. She used to sleep with the accused in the same bed. Out of that relation she became pregnant. After filing of ejhar a *bichar* was held where she expressed that she had no grievance against the accused. She further deposed that she had free consent in the physical relation with the accused and there was no force on the part of the accused. She was major.
- 9. PW.3 did not implicate the accused in any way; rather stated about the compromise of the matter as per their tribal and religious custom.

 The victim was a major.
- 10. PW.4 is a female doctor. According to her on 14/11/14 she examined the victim and found the victim as pregnant. She wrote the history of pregnancy which shows that out of love affairs of the victim with the accused and their living together the victim became pregnant. Victim's mother was against the relationship and hence filed the case. Ext.2 is the medical report. As per physical, labrortical and radiological investigation the age of the victim was found above 15 and below 18. In the cross she denied that victim was above 18.
- 11. PW.5 is the IO, who submitted the charge sheet. There is no contradiction Prosecution did not declare any of the witnesses as hostile. Except the evidence of doctor about the age there is virtually no evidence against the accused. Both the victim and complainant and one independent witness deposed the age of the victim as above 18 at the relevant time.

12. During argument ld. defence counsel has submitted that as per tribal

custom prevalent in the society of the accused there is no bar for marriage

between near relatives. It is further contended that the victim in her own

statement both before the Magistrate and before this court stated about her

love affairs with the accused and the cogent evidence of mother discloses the

age of the victim as above 18 at the material time.

I under the facts and circumstances of this case find sufficient force upon the

contention of the ld. defence counsel.

13. In view of the above it is held that prosecution case is not proved at a

ll. The accused is therefore held to be not guilty. He is thus acquitted and

set liberty forth with. The bail bond shall remain in force for six months.

Judgment is pronounced and delivered in the open court under my

seal and signature on this 4^h day of July 2015.

Dictated and corrected by

(K.Choudhury)

(K.Choudhury)

Sessions Judge,

Sessions Judge,

Cachar

Cachar, Silchar.

Dictation taken & transcribed by

K.Bhattacharjee,

(Stenographer).

IN THE COURT OF SESSIONS JUDGE, CACHAR

<u>Spl. POCSO 4 of 2015</u>

APPENDIDX

(A) PROSECUTION WITNESSES: -

PW 1 – Sri Solomon Mar,

PW 2 – Smti. Lalrengpui Hmar,

PW 3 – Sri Ramzau Hmar,

PW 4 - D. M.Deb,MO,

(B) <u>DEFENCE WITNESSES</u>: -

(C) <u>COURT WITNESSES</u>: - NIL.

(D) PROSECUTION EXHIBITS: -

Ext. 1 – FIR,

Ext. 1(1)(2) – Signature of PW.1

Ext. 2 – Report of PW.4,

Ext. 2(1),2(2) – Signatures of victim and Dr.G.Das respectively.

Ext. 3 – Statement of Subhan Guwala u/s 164 Cr.P.C.,

Ext.3(1),3(2)- Signature of PW.4

Ext. 4 – Medical report,

Ext. 4(1) and 4(2) — Signature of PW.7,

Ext 4(3) - Signature of DR. Y.N. Singha

Ext.5- Sketch map

Ext.5(1)- Signature of PW.8

Ext.6- Charge sheet

Ext.6(1)- Signature of PW.8

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) COURT EXHIBITS: -

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

(Shri K. Choudhuy),
Sessions Judge,
Cachar.