IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 32 OF 2017

(Under Section 376/109/313 read with section 4 of the POCSO Act, arising out

of G.R. Case No. 2415 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1. Sri Bikash Basfor

Son of Amrit Basfor

Resident of Horijan Colony, New Amolapatty road, Police Station – Tezpur Dist:- Sonitpur,Assam

2. Smti Manju Basfor

Wife of Amrit Basfor

Resident of Horijan Colony, New Amolapatty road, Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge :- 20-02-2018

Date of Recording Evidence :- 22-05-2018, 18-07-2018

& 31-07-2018.

Date of examination of accused u/s :- 31-07-2018.

313 Cr.P.C

Date of Argument :- 31-07-2018.

Date of Judgment :- 31-07-2018.

Counsel for the Prosecution :- Mr. Munin Ch. Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- Smti Dulumoni Sinha, Advocate.

JUDGMENT

- 1. In this case accused Smti Manju Basfor is put for trial for the allegation of charge u/s 376/313 read with section 109 of the IPC and accused Sri Bikash Basfor is put for trial for allegation of charge under Section 376/313 of IPC read with section 4 of the POCSO Act, 2012.
- 2. The factual matrix according to the FIR in brief is that informant's 16 years old minor daughter was in love with Bikash Basfor for last one year. Thereafter, accused and informant's minor daughter indulged in sexual activities regularly, as a result, she became pregnant. When she became pregnant the mother of the accused Bikash Basfor without informing the informant secretly taken her to a place and aborted her pregnancy. Thereafter, after few days she returned to him. In the aforesaid activities, parents of the accused were also involved. When they enquired about the matter they agreed to pay compensation to informant's daughter but stated that they will not accept the informant's daughter as a bride. Hence, this prosecution case. The ejahar was filed by complainant Smti Rina Basfor before the O/C Tezpur Police station on 29-06-2017.
- **3.** On receipt of the aforementioned FIR, the Officer-In-Charge of Tezpur Police Station registered a case being Tezpur P.S. Case No. 1257/17 u/s 376/313/34 of the IPC read with section 4 of POCSO Act. After completion of usual investigation, the O/C Tezpur Police Station filed charge sheet under section 376/313/34 of the IPC against the accused persons.
- **4.** On being appeared the accused before this Court, after hearing both parties, charge u/s 376/313 read with section 109 of the IPC against the accused Smti Manju Basfor and also framed charge u/s 376/313 of IPC read with section 4 of POCSO Act, 2012 against the accused Sri Bikash Basfor and particulars of the charge was read over, explained to the accused to which they pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case, prosecution has examined two numbers of witnesses i.e. the complainant and the victim. After examination of the victim, learned counsel for the accused submitted to close the evidence on the ground

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that the statement of the complainant as well as the victim could not reveal any materials of any of the alleged offence against any of the accused and it is futile to examine the other witnesses. I have heard the learned Special Public Prosecutor. On perusal of the statement of the witnesses recorded so far it arrived that neither statement of complainant nor the victim could reveal any materials against any of the accused. With the evidence of the aforesaid witnesses I think, even if examined the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused persons. Considering the materials and facts as narrated above, the prosecution evidence is closed. Statement of the accused persons is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before them for their explanation where the denied the allegation and declined to adduce defence evidence.

- **6.** I have heard the argument put forward by the learned counsels of both sides.
- **7.** The point for decision in this case is that -
 - 1. Whether the accused Manju Basfor prior to 29-06-2017 at Harijan Colony under Tezpur Police station committed the offence of rape and that she abetted her son Bikash Basfor, in the commission of the said offence of rape which was committed in connection with abetment as a result Miss Neha Basfor became pregnant of 7 months and thereby committed an offence punishable under section 376 of IPC read with section 109 of the IPC?
 - 2. Secondly, the accused Manju Basfor prior to 29-06-2017 at Nagaon voluntarily caused Miss Neha Basfor then being with child to miscarry without her consent and such miscarriage was not being caused by you in good faith for the purpose of saving the life of the said Neha Basfor in the commission of the said offence of rape which was committed in connection with abetment

and thereby committed an offence punishable under section 313 of IPC r/w 109 of IPC and within my cognizance?

- 3. Whether the accused Bikash Basfor prior to 29-06-2017 at Harijan Colony under Tezpur Police station committed penetrative sexual assault on Miss Neha Basfor (16 years) as a result she became pregnant of 7 months and thereby committed an offence punishable under section 376 of IPC read with section 4 of the POSCO Act?
- 4. Whether the accused Bikash Basfor prior to 29-06-2017 at Nagaon voluntarily caused Miss Neha Basfor then being with child to miscarry without her consent and such miscarriage was not being caused by you in good faith for the purpose of saving the life of the said Neha Basfor and thereby committed an offence punishable under section 313 of IPC?

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1 Smti Rina Basfor stated that the accused persons are her co-villagers. Victim is her daughter. At the relevant time her victim daughter was aged about 16 years. The incident took place about one year ago. She was not aware that her daughter had love affairs with accused Bikash Basfor. She came to know from the villagers that accused Bikash Basfor at first taken her daughter to Dholaibil hospital for abortion as she became pregnant from the side of Bikash Basfor. But the doctor of Dholaibil hospital refused to do it. Thereafter, accused Manju Basfor, mother of Bikash Basfor called her daughter to her house and assaulted her. Thereafter, Manju Basfor, mother of the accused Bikash taken her daughter to Nagaon for abortion. At that time her daughter was 7 months pregnant. At Nagaon her daughter was aborted

through the doctor by expensing Rs. 25,000/- . It is also came to know that her daughter was admitted in the hospital for two days after the abortion. Thereafter, the people of their village convened a meeting and asked the accused to marry her daughter. But the accused Bikash did not marry her daughter. Thereafter, she has lodged the ejahar. Ext. 1 is the ejahar and Ext. 1(1) is his signature. The ejahar was written by a scribe who is her nieghbour at her instruction. Police recorded her statement and also recorded the statement of her daughter and other accused. Police sent her daughter for medical examination. Then her statement was recorded through learned Magistrate. At the time of recording her statement she was present. Ext. 2 is the statement u/s 164 Cr.P.C. of her daughter where she put signature Ext. 2(1) as mother.

In cross-examination, she admitted that the ejahar was written by her villagers and asked her to put signature thereon. Thereafter she put her signature therein. She has not gone through the ejahar as she is illiterate. At the relevant time the actual age of her daughter was 18 years but in the ejahar the age of her daughter was written as 16 years. As per instruction of villagers, she has lodged the ejahar. Her victim daughter never informed her about the incident. Therefore, she does not know actually what happened. On the other days, she has deposed what instructed by the villagers. Today she has deposed truly. Actually, no such incident took place.

10. PW 2, Miss X who was examined after administering oath, stated that she was 20 years at the time of deposition. She has also stated that the incident took place about one year ago. She loved the accused for long time. Therefore, she involved in co-habiting with the accused Bikash. As a result of several co-habitation with the accused Bikash, she became pregnant. Then accused Bikash told her that why her body was look like pregnant girl. Then Bikash took her to the doctor and pregnancy test was done, where it's resulted as a positive. Thereafter, he took her to Dholaibil hospital for abortion but the doctor of the said hospital refused to do abortion stating that her age is not such for abortion. Then accused Bikash Basfor along with his mother Manju Basfor took her to a Nursing Home at Nagaon and at there the doctor

terminated her pregnancy. She was admitted in the said Nursing Home for 2 days. All the expenses for my treatment at Nursing Home was paid by accused Bikash. Then their "Samaj" has held a meeting but in the said public meeting, the leaders of the meeting asked the accused to marry her. There were two meetings were hold for the said occasions. Thereafter, public of the said meeting advised them to institute a case against the accused persons. Accordingly, her mother Rina Basfore has lodged an ejahar before the police station against the accused persons. After instituting the case, police recorded her statement u/s 161 CrPC and also examined through doctor. Thereafter, she has been sent to Ld. Magistrate to record statement u/s 164 CrPC. Ext 2 is the said statement u/s 164 of CrPC and Ext 2 (3) to 2 (6) are her signatures.

In cross-examination, she admitted that the case was lodged by her mother Rina Basfore due to misunderstanding. Out of love and affection they have involved in sexual relation as a result of which she became pregnant. In both the place at her own will went with the accused. Abortion was done at her own consent. As the villagers instigated them to file the case against the accused persons, her mother lodged the case against them. At the instigation of the villagers they have made statement before the I/O and then to the Ld. Magistrate. In fact, there was no such incident took place as stated by her before the I/O and before the Ld. Magistrate. At present, the guardians of both the parties agreed to marry her by accused Bikash but as her father was died about 3 months ago so their marriage could not solemnized at present according to Hindu rites and rituals. At present, she has no any objection if the accused persons are acquitted from this case.

- **11.** These much is the evidence of the prosecution.
- 12. To prove the charge against the accused Smti Manju Basfor u/s 376 of the IPC read with section 109 of the IPC, prosecution must prove that accused abetting her son Bikash Basfor to commit rape on the victim but as discussed herein before neither in the statement of the complainant who is the mother of the victim and statement of the victim noway reveals that it is the accused Smti Manju Basfor who instigated or abetted accused Bikash Basfor to commit rape on the victim. According to the victim girl, PW 2, she herself stated

that she has love affairs with Bikash for long time, therefore, she involved in co-habiting with the accused Bikash, as a result of several co-habitation with the accused Bikash, she became pregnant. Therefore no ingredients of section 376 read with section 109 of the IPC is fulfilled as such, failed to prove the said charge against the accused Smti Manju Basfor.

Secondly, to prove the charge u/s 313 of IPC read with section 109 of the IPC, prosecution must prove that accused Manju Basfor abetting other accused, her son Bikash - (i) that the victim was with a child; or that she was quick with child, (ii) that the accused did some act likely to cause a miscarriage, (iii) that the accused did so voluntarily; (iv) that such woman did miscarry in consequence; (v) that such miscarriage was not caused in good faith in order to save the victim's life. But as stated above, the victim herself stated that due to long love affairs they have in indulged in sexual relation for several times as a result she became pregnant. There is no evidence that accused Manju Basfor abetting her son Bikash to do some acts by which caused a miscarriage. There is no any evidence that miscarriage was not caused in good faith in order to save the victim's life. According to the victim, she was taken by both the accused persons to Nagaon to terminate her pregnancy. In both the places i.e. in Dholaibil hospital as well as Nagaon Nursing Home she went with the accused willingly and abortion was done in her consent. Therefore, there is no any evidence that accused manju Basfor instigated or abetting her son Bikash Basfor to commit abortion. Therefore, the alleged charge u/s 313 of the IPC read with section 109 of the IPC is also failed.

13. Similarly as discussed herein above, there is no any evidence about the exact age of the victim. According to the allegation at the relevant time victim is 16 years old but the complainant who is the mother of the victim stated that at the relevant time, the age of her daughter was only 18 years and in the court victim stated that on the date of deposition she was 20 years and the incident took place about one year ago. Therefore, according to her, she was above 18 years at the time of alleged incident. In fact, the Investigating Officer has failed to submit any date of Birth Certificate or age certificate of the victim during investigation. Therefore, the victim cannot be stated to be a girl below the age of 18 years. As such, charge under section 4 of the Protection of Child from

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Sexual Offences (POCSO) Act, can, there is no any evidence that victim has

been forcefully committed rape by accused. According to the victim she was in

love affairs with the accused for about one year and therefore, she was

indulged in sexual activities with the accused several times at her own will, as a

result, she became pregnant and at her own will she was taken by the accused

where she has been terminated her pregnancy. The abortion was done at her

own will and consent. Therefore, none of the charge u/s 376 of the IPC read

with section 4 of the POCSO Act or under section 313 Cr.P.C. is found to have

been proved by the prosecution.

14. Under such circumstances, I have no hesitation to hold that the

prosecution has failed to prove any of the charge levelled against any of the

accused beyond any reasonable doubt. Therefore, I acquit the accused Smti

Manju Basfor and Bikash Basfor and set them at liberty.

15. The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the 31st day of July,

2018.

(Ashok Kumar Borah)
SPECIAL JUDGE,

SONITPUR: TEZPUR

Dictated and corrected by me.

(Ashok Kumar Borah) SPECIAL JUDGE,

SONITPUR :: TEZPUR.

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

APPENDIX

Prosecution Witness

Smti Rina Basfor, complainant 1. Prosecution Witness No.1

2. Prosecution Witness No.2 Victim

Exhibits

Ext. 1 : Ejahat

: statement of the victim u/s 164 Cr.P.C. Ext. 2

> (Ashok Kumar Borah) **SPECIAL JUDGE SONITPUR: TEZPUR**

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