# 

(U/S 341 IPC and Sec.4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam

-Versus-

Sunam Uddin @ Sajur Hussain.....Accused.

Charge framed on:	12.12.19
P.Ws. examined on:	3.3.2020,
Argument heard on:	3.3.2020.
Judgment pronounced and delivered on:	3.3.2020.

### **Counsel Appeared:**

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Smti. T. Baidya, Id. Advocate.

#### **JUDGMENT**

1. The prosecution case, in brief, is that the informant lodged an FIR with the In-Charge, Udharbond Police Station stating the facts that on 27/9/17 at about 11-30 a.m. she i.e. the informant cum victim ( name withheld ) went to fetch water along with his younger brother Azizur to a nearby spring and at that time accused came there and tied her hands with her *urna* and gagged her mouth thereafter her said younger brother raised hue and cry and then accused showed him dao with threatening to kill him

to which her younger brother ran away from the place and then accused dragged the victim towards jungle and committed rape upon her. On her protest accused also assaulted her with a piece of wood and she became senseless.

- 2. On receipt of the FIR, O/c Udharbond PS registered a regular PS case vide Udharbond P.S. Case No. 201 of 17 U/S 376 of IPC was registered . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C and the victim was medically examined. Police also visited the place of occurrence and drew up a sketch map and recorded the statement of the witnesses and subsequently after completion of investigation submitted charge sheet against the accused person U/S 4 of POCSO Act.
- 3. As the offence under POCSO Act being exclusively triable by the Court of Special court , ld. CJM, Cachar, Silchar sent the case record to this court and trial was taken up by this court and subsequently in due course after hearing both sides formal charge U/S 341 IPC and Section 4 of POCSO Act was framed by this court against the accused person. The charge having been read over and explained, the accused person pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (1) Whether the accused person on 27.9.17 at about 11-30 a.m. at village Dumurghat under Udharbond PS wrongfully restrained the victim informant, as alleged?
- (2) Whether the accused person committed penetrative sexual assault upon the victim, as alleged ?
- 5. Prosecution examined as many as two witnesses including the victim cum the informant . On the submission of the ld. Special P.P. the evidence for the prosecution side is closed. Statement of the accused is

recorded U/S 313 Cr.P.C. wherein the accused denied the allegation leveled against him and defence declined to adduce any evidence.

6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

#### **DISCUSSIONS, DECISIONS AND REASONS THERE-OF**

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW.1 is victim cum informant of this case and she deposed in her evidence that accused person is her husband. She further deposed that in the year 2017 she filed an FIR against the accused before Udharbond PS thereafter police sent her to SMCH, Silchar where her medical examination was done and she was also brought to Court where her statements U/S 164 Cr.P.C. was recorded. She further deposed that after filing of the case, the village people amicably settled the dispute and she was given in marriage with the accused person socially. She added that the marriage took place about 2 years ago and presently she has been staying with her husband. Ext. 1 is the FIR wherein Ext. 1(1) is her signature and Ext. 2 is the 164 Cr.P.C. statement wherein Ext. 2(1) to 2(6) are signatures of PW.1.

She deposed in her cross examination that she has been living with her husband, the accused peacefully and she is having no grievances against the accused. She further stated that at the time of occurrence, she was above 18 years old.

9. PW.2 Zakir Hussain Laskar deposed in his evidence that Informant/PW 1 is his daughter who had filed an ejahar against the accused person about three years ago for illegally restraining and trying to have sexual assault to her daughter, the victim, while she went to bring water from the spring. He added that his son who was with her informed him

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about the incident for which the victim filed this present case. He also deposed that with the intervention of local people and relatives his daughter was given in marriage with the accused person and presently she has been living with the accused as his wife in his house at Doyapur Part I.

PW.2 stated in his cross examination that he did not see any occurrence and his daughter is living peacefully with accused and PW.2 is having no grievances against the accused at present.

- 10. Appreciating the evidence available on record as discussed above, it reveals that the prime witness the victim cum informant PW.1 did not at all implicate the accused in the alleged offence of crime either in her examination in chief or in the cross examination before this court. Rather from the evidence of PW.1 it appears that that she was given marriage with the accused two years ago from the date of her deposition socially and she has been living with her accused husband peacefully having no grievances against him . She categorically stated in her cross examination that she was above 18 years old at the time of occurrence. PW.2 who is a reported witness though stated in his evidence that his son reported him about the incident for which PW.1 filed the FIR, but the same cannot help to the case of the prosecution in view of the evidence of the victim as discussed above and in view of his statements in the examination in chief and examination of PW.2 himself that he did not see any occurrence and his daughter have been living peacefully with her accused husband and he is having no grievance against the accused. So, in view of the evidence as discussed above , the accused person cannot be fastened in the alleged offence of crime as charged against him.
- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 341 of IPC and Sec. 4 of POCSO Act against accused.

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12. In view of the above, accused person is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bond stands discharged.

Judgment is pronounced and delivered in the open court on this the 3rd day of March, 2020.

Dictated and corrected by

( Darak Ullah )

Special Judge,

Cachar, Silchar.

Special Judge, Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

# IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 9 of 2018.

## **APPENDIX**

(A) PROSECUTION WITNESSES: -

P.W. 1 – victim cum informant,
P.W. 2 – Zakir Hussain Laskar
(B) <u>DEFENCE WITNESSES</u>: - NIL
(C) <u>PROSECUTION EXHIBITS</u>: -

Ext. 1 – FI

Ext.2 - statement of victim.

Ext.3 - FIR

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

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.