# IN THE COURT OF ADDL SPECIAL JUDGE (FTC)::KOKRAJHAR

Present :- Sri C. Chaturvedy, Addl. Sessions Judge (FTC), Kokrajhar.

# **SPECIAL CASE NO.22/2018**

U/S. 4 of The Protection of Children from Sexual Offences Act, 2012

STATE OF ASSAM

Vs

Sri Romjan Ali Med. Abed Ali Vill:- Ajmal Model village, P.S. Kokrajhar.

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghosh, Special P.P.

Learned Counsel for the defence Mr. Narayan Sarkar

Charge framed on 16.11.2018
Evidence recorded on 15.12.2018, 7.1.2019
Argument heard on 25.1.2019
Judgment pronounced on 25.1.2019

# <u>JUDGMENT</u>

- 1. The case of the prosecution is that on 20.5.2018 one xxxx, the father of the victim, lodged a writen FIR at Kokrajhar Police Station alleging that on 20.05.2018 at about 12.30 a.m the accused induced his daughter, the victim, and having taken her to a nearby abandoned house committed rape on her, by force.
- 2. On receipt of the FIR, a case U/S 4/8 of the The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was registered

and investigated. After completion of the investigation, a charge sheet was laid against the accused Romjan Ali for commission of offence U/S 4 of the POCSO Act.

- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. The case was, later, transferred to this Court for disposal.
- 4. A charge U/S 4 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed to be tried.
- 5. In the course of trial, prosecution examined 5 witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

#### POINTS FOR DETERMINATION:-

(i) Whether the accused committed the act of penetrative sexual assault on the victim and thereby committed an offence under Section 4 of the POCSO Act?

# **DECISION AND REASONS:**

6. Pw 1 is the victim of this case. She deposed that the occurrence took place about 5 months back at about 12 night. At that time, she was talking to accused Ramjan at a nearby place. One co-villager, Faisal, came at that time and started shouting. Later, villagers gathered and some one informed police. Few moments later, Police came to the place of occurrence and took her. Ramjan had fled away in the meanwhile. Pw 1 also deposed that the villagers told her

father to lodge a case to protect her name.

- 7. The learned Special P.P took leave of the Court to cross examine the pw 1 and after the leave was granted, pw 1 was cross examined by the learned Special P.P. In her cross examination by learned Special P.P, pw 1 deposed that she had given a statement under Section 164 CrPC before the Judicial Magistrate. Ext 1 is her statement. Ext 1 (1), Ext 1 (2) are her signatures. She admitted that she had stated before the Magistrate that she voluntarily had sexual relationship with the accused on many occasion in different places. She also admitted that after the lodging of FIR, accused has entered into marriage agreement with her.
- 8. In her cross -examination by the defence, pw 1 stated that she had stated about sexual intercourse with the accused because her village people asked her to state so. She deposed that in-fact accused never had any sexual relationship with her.
- 9. Pw 2, is the father of the victim and he deposed that the occurrence took place about 5 months back and that his daughter and accused Ramjan love each other. On the day of ocurrence, at night hours, his daughter was talking to accused at a place. Someone informed the police and my daughter was picked up by police. I lodged the FIR. I had given thumb impression in the FIR.
- 10. The learned Special P.P took leave of the Court to cross examine the pw 2 and the after the leave was granted, pw 2 was cross examined by the learned Special P.P. In his cross-examination, pw 2 admitted that he had stated before the police that his daughter

is aged 16 years. He admitted that there has been an agreement that accused will marry his daughter and that is why he has settled the dispute.

- 11. In cross-examination by the defence, pw 2 deposed that the accused has not committed any sexual intercourse with his daughter.
- 12. Pw 3 Faizal Hoque deposed that the occurrence took place about 5 months back. He had come out of his residence at 11.30 p.m for relieving. At that time he saw some movements in a house and started shouting. A boy fled away from the house but he could not recognize him. Later, villagers assembled and the girl, the victim, was found in the house. From the victim he came to know that the boy was Ramjan. Later, police came and took away the victim.
- 13. Pw 4 Anowar Hussain deposed that about 5 months back, at about 11.30 p.m, while he was sleeping, he heard Faisal shouting as "thief", "thief". When he went to the place of occurrence, he found the victim in the house and she told him that she loves accused Ramjan. Later, police came and took away the victim.
- 14. Pw 5 Nur Islam Ahmed is the Investigating Officer of the case and he deposed in his examination in chief that pw 1, the victim, stated before him that accused had committed sexual intercourse with her.
- 15. The perusal of the evidence on record reveals that even though the learned Special P.P had sought the leave of the Court to declare the pw 1 and pw 2 as hostile witnesses, he cross-examined them only with respect to their statements under Section 161 CrPC. The

Investigating Officer, pw 5 has confirmed only the statement of the

pw 1 and pw 2 as made to him under Section 161 CrPC. A

statatement under Section 161 CrPC is not an evidence in the eye of

law and hence even if the victim has stated in her statement under

Section 161 CrPC that accused did have sexual intercourse with her,

such an evidence would have no utility in the eye of law. What is

essential is the evidence tendered in Court.

16. So far as the evidence tendered in Court is concerned, the

victim categorically stated that accused did not have sexual

intercourse with her. In view of the evidence on record, no conviction

under Section 4 of the POCSO Act can be sustained.

17. In the result, the point for determination is answered in

negative.

**ORDER** 

Accused Romjan Ali is acquitted of the charge under Section 4

of the POCSO Act and set at liberty forthwith.

Bail bonds shall remain valid for six months.

Given under the hand and seal of this Court.

Dictated by: -

Addl. Special Judge,

Addl Special Judge

Kokrajhar

Kokrajhar

# **APPENDIX**

Prosecution witnesses: -

- 1. Pw 1 -victim
- 2. Pw 2- father of the victim
- 3. Pw 3- Faizal Hoque
- 4. Pw 4-Anowar Hussain
- 5. Pw 5-Nur Islam Ahmed, Investigating Officer

Defence Evidence-

1. Nil

Court evidence

1. Nil

Addl. Special Judge, Kokrajhar