Present :- Shri J. Borah, AJS Special Judge, Dhubri.

SPECIAL CASE NO.96 OF 2018

U/s.376 I.P.C.

Read With Sec.4 of Protection of Children from Sexual Offences Act

State of Assam Vs Azizul Hoque

....Accused Person.

Date of Framing Charge :- 22-11-2018

Date of Recording Evidence :- 06-12-2018

Date of Argument :- 10-12-2018

Date of Judgment :- 10-12-2018

Advocates Appeared:

For the State of Assam :- Shri S.C. Ray

Learned Addl. P.P.

For the Defence :-Shri S.R. Sarkar

Learned Advocate.

JUDGMENT

- 1. This case is U/s.376 I.P.C read with Sec.4 of Protection of Children from Sexual Offences Act, so, the name of the victim is not mentioned here and she is hereinafter referred to as 'X'.
- 2. The prosecution case, in brief, is that Nur Jamal Seikh, the informant lodged an ejahar with Chagalia Police Out Post on 26.12.015 informing that 'X' is his daughter, aged about 14 years. On 22.12.015, the informant Nur Jamal Seikh was not in his house. Taking the advantage of his absence in his house, the accused Azizul Hoque came to his house, gagged the mouth of his daughter 'X' and took to his house where he committed sexual intercourse with her forcefully. The neighbouring people heard the cry of 'X' and they saved her and recovered from there.

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So, the informant prayed for taking necessary action against the said accused Azizul Hoque.

- 3. The Chagalia Police Out Post received the ejahar and vide GDE No.580 dated 26.12.015 and forwarded to Golakganj Police Station received the ejahar and registered as Golakganj Police Station Case No.933/015 U/s.4 of Protection of Children from Sexual Offences Act added Section 376(3) I.P.C. The case was investigated and having found prima facie U/s.376(3) I.P.C R/W Sec.4 of Protection of Children from Sexual Offences Act against the accused Azizul Hoque laid the chargesheet before the court for trial.
- 4. The accused Azizul Hoque appeared in the court of Special Judge, Dhubri. The Hon'ble Special Judge transferred the case to this court for trial.
- 5. The accused Azizul Hoque, hereinafter called the accused person, appeared in this case. He was furnished copy. Charge was framed U/s.376 I.P.C and also U/s.4 of Protection of Children from Sexual Offences Act against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
 - 6. The prosecution, in order to bring home the charge against the accused, examined 3 (Three) witnesses, namely --
 - 1. Nur Jamal S PW-1
 - 2. X/the victim PW-2
 - 3. Rup Bhan Bewa PW-3
 - 7. Since there found no incriminating evidence adduced by the prosecution witnesses against the accused, so he is not examined U/s.313 Cr.P.C.
 - 8. Heard argument for both sides.

9. **POINTS FOR DETERMINATION**

(i) Whether the accused on 22.12.015 at about 8-00 at night at village Koimari Part-VII under Golakganj Police Station committed

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rape on the minor daughter of informant 'X' and thereby committed offence U/s.376 I.P.C.

(ii) Whether the accused on 22.12.015 at about 8-00 at night at village Koimari Part-VII under Golakganj Police Station committed penetrative sexual assault on the daughter of informant 'X' and thereby committed offence U/s.4 of Protection of Children from Sexual Offences Act, 2012.

DECISION AND REASONS THEREOF:

- 10. In this prosecution case, PW-1 Nur Jamal Hoque is the informant, PW-2 'X' is the alleged victim and PW-3 Rup Bhan Bewa is the grandmother of the 'X'.
- 11. Let us now go through the evidence available on record.

PW-1 Nur Jamal Hoque has stated in his evidence that he is the informant in this case. He lodged this case against the accused Azizur Hoque. 'X' is his daughter aged and she was 19 years at the time of occurrence. The accused proposed for marriage of his daughter. But he refused the said proposal. On the day of occurrence, he went to market and he returned home at about 8-00 P.M when he returned home, he came to know that the accused came to their house and stood in front of 'X'. When he got to know about the occurrence, he lodged the case against the accused, Ext-1 is the ejahar, Ext-1(1) is his signature.

In her cross, PW-1 has stated that when the accused wanted to take 'X' to his house, she raised hue and cry.

12. PW-2 'X' has stated in her evidence that informant is her father. Occurrence took place three years ago and at the time of occurrence, she was 19 years old. On the day of occurrence, after dinner, she went to the house of grandmother. It was 8-00 P.M. On her way, she met the accused and had talk with him. At such, her grandmother raised hue and cry. There gathered nearby people. Her father came from the market and when he got to know about

it, he became angry with the accused and lodged the case against the accused. The accused did not do any evil on her. She gave statement before the Magistrate, Ext-2 is the said statement, Ext-2(1) is her signature.

In her cross, PW-2 has stated that she gave her statement as taught by the villagers.

13. PW-3 Rupbhan Bewa has stated in her evidence that informant is her son and 'X' is her grand-daughter. She knows the accused. The occurrence took place three years ago. Her grand-daughter 'X' was talking with the accused. The villagers raised hue and cry for the said reason. When the informant got to know about it, he lodged the ejahar against the accused.

Cross examination of PW-3 was declined by the defence.

- 14. Thus, careful scrutiny of evidence of PW-1 to PW-3 shows that PW-1 being the informant has adduced no incriminating evidence against the accused. PW-1 has only stated that the accused came to his house and stood by his daughter, at such, there was hue and cry. When he got to know about it, he lodged the case against the accused. There is no evidence adduced by PW-1 that the accused had sexual intercourse with 'X' forcefully or he performed penetrative sexual intercourse on 'X'. So, the evidence of PW-1 is not inculpatory against the accused.
- 15. Same is the evidence of PW-2 'X', the victim. There is evidence adduced by PW-2 'X' that the accused committed sexual intercourse with her forcefully. PW-2 sternly denied to perform any evil on her by the accused. PW-2 has also made it clear that she gave her statements before the Magistrate as taught by other. So, the evidence of PW-2 also found not inculpatory against the accused.
- 16. PW-3 is the grandmother of the 'X'. She has clearly stated that villagers raised hue and cry seeing talk held between 'X' and

the accused. Except this, there had happened nothing. So, the evidence of PW-1 does not divulge any voluptous act performed on 'X' by the accused.

- 17. Thus, the prosecution evidence as projected by the prosecution is not sufficient and satisfactory to prove that there was forceful sexual intercourse on 'X' by the accused or penetrative sexual intercourse on PW-2 'X' by the accused. The prosecution evidence is found dearth of merit. The prosecution, thereby, has failed to prove it's case U/s.376 I.P.C and Sec.4 of POCSO Act against the accused beyond all reasonable doubt.
- 18. Held, the accused is not guilty U/s.376 IPC and Sec.4 of POCSO Act.

Accordingly, the accused is acquitted and set at liberty.

The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal of this court on this 10th day of December, 2018.

Transcribed & Typed by

Special Judge Dhubri

Stenographer
Court of the Special Judge
Dhubri

APPENDIX

Prosecution Witnesses

PW-1 Nur Jamal Seikh

PW-2 X/the victim

PW-3 Rupbhan Bewa

Defence Witness :- NIL

Prosecution Exhibits:

Ext-1 Statement of victim U/s.164 Cr.P.C

Special Judge Dhubri