:: IN THE COURT OF THE SESSIONS JUDGE ::::: NALBARI ::

<u>Present</u>: Mrs. S. Begum.

Sessions Judge,

Nalbari.

SESSIONS SPL (P)CASE NO: 37/2017 u/s-376 IPC R/W Sec. 4 of the POCSO Act.

State of AssamComplainant

-Vs-

Md. Safikul Islam.....Accused person.

Appearance :-

For the prosecution : Mr. K.K. Sarma, Spl.Public Prosecutor

For the defence : Mr. J. Abedin, Advocate.

Date of argument : 18/01/2019 Date of Judgment : 04/02/2019.

J U D G M E N T

The prosecution case in brief is that one Md. Saiful Islam lodged an ejahar alleging inter alia that accused Safikul Islam since few days back used to give slang gesture towards his minor sister Rahima Begum (herein after referred as Miss "X") aged 14 years. It is alleged that on the date of occurrence i.e on 26/06/17 while the victim went to river, then taking the advantage of absence of any other person in the said place the said accused committed rape upon the victim by dragging her into the jute cultivation. Hearing the hue and cry of the victim while her mother Sabiha Khatoon came to the said place she caught the accused red handed and raised hue and cry. While people came hearing hue and cry, then accused fled away from the place of occurrence.

- 2. Police force set into motion on receipt of the ejahar and police on completion of the investigation submitted charge-sheet against accused Md. Safikul Islam u/s-376 IPC r/w sec. 4 of the POCSO Act.
- 3. While the accused entered into his appearance before this court getting prima facie material against the accused u/s-376 IPC r/w sec. 4 of the POCSO

Act charge was framed accordingly and read over to the accused to which he pleaded not guilty and claimed to be tried.

4. The prosecution to bring home charge against the accused examined as many as seven witnesses including informant and the victim. The case of the accused is of denial.

5.

POINT FOR DETERMINATION.

- (i) Whether the accused on 26/6/2017 at village Kalarchar under Bhangnamari PS committed rape upon Miss 'X' and thereby committed an offence punishable u/s-376 IPC?
- (ii) Whether the accused on 26/06/2017 at village Kalarchar under Bhangnamari P.S committed penetrative sexual assault upon Miss 'X', aged about 14 years and thereby committed an offence punishable u/s-4 of the POCSO Act?

DECISION AND REASONS THEREOF

- 6. I have carefully scrutinized the evidence on record and heard argument forwarded by learned counsel for both the sides. Now to arrive at a judicious decision let me discuss and appreciate the testimony of the prosecution witnesses. At the out set let me discuss the evidence of PW-2 Sabiha. she testified during her evidence that one year ago quarrel happened between her and the accused for the dispute relating to the boundary of their cultivable land. The quarrel happened on the date of Idd. Festival. She was at her own cultivable land. Later on the victim also arrived at the said place and while she questioned the accused why he was quarreling with her mother then accused pushed her. While they returned back to the house her son Saiful knowing about the said fact lodged ejahar. It is denied by her that her daughter was raped by the accused.
- 7. PW-3 the victim testified that on the day of Idd quarrel happened between her mother and the accused for the boundary dispute relating to their

land which was at Bhangnamari Char near the Brahmaputra river. The accused pushed her mother. While she noticed accused quarreled with her mother, then she inquired the accused why he quarreled with her mother, then he pushed her.

- 8. PW-4 Zinnat Ali disclosed about hearing the incident of quarrel between the accused and victim and her mother on the date of occurrence.
- 9. PW-5 Saiful Islam who is the informant cum brother of the victim only disclosed about some quarrel between the accused and his mother near the bank of river Brahmaputra for boundary dispute of their cultivable land. It is further disclosed that after getting information about the said quarrel he lodged the ejahar. It is disclosed that except the quarrel for land dispute no other incident happened.
- 10. PW-6, Anima Begum supported the fact that for the land dispute quarrel happened between the victim's mother and the accused. She disclosed that the accused did not perform any bad work with the victim.
- 11. PW-7 Saleha Begum deposed in the same tune as that of PW-6.
- 12. PW-1 Dr. Dipti Choudhury is the medical officer of this case. On 25/07/17 she examined Miss 'X' D/O-Late Raij Uddin of village Bhangnamari under Bhangnamari PS who was escorted by WPC Pulu Das of Bhangnamri PS in connection with Bhangnamri PS 25/17 u/s-376 R/W sec 4 of the POCSO Act and found as follows:-

Her external genitalia was found healthy. Vagina healthy and it admits two fingers. Hymen was torn. Vaginal sperm was sent for laboratory test for sperm determination but no sperm was seen. X-Ray was advised for age determination. X-Ray report shows that estimated age of the victim is above 16 years and below 18 years. Clinical opinion shows that the patient is not consistent with recent sexual intercourse or assault. She exhibited Ext-1 as the medical report and Ext-1(1) & 1(2) as her signature. Ext-2 as the X-Ray report submitted by Dr. P.K Sarma.

- 13. From the foregoing evidence now let me decide whether the prosecution has been able to establish a case u/s-376 IPC r/w Sec. 4 of the POCSO Act.
- 14. In the instant case in the ejahar it is reflected that victim Miss 'X' who is a minor girl aged 14 years was raped by the accused. However, the ejahar is not a substantive piece of evidence. On the perusal of the evidence of victim Miss 'X', and the mother of the victim (PW-2) it appears that nowhere they stated anything regarding commission of rape upon the victim by the accused. PW-5 who is the informant cum brother of the victim also remained silent regarding happening of any rape incident upon the victim about which he disclosed in the ejahar. All the vital witnesses including victim did not support the prosecution case. Instead they stated that some quarrel happened between the victim's mother Sabiha with the accused for boundary dispute and that victim and the mother of the victim were pushed to the ground by the accused for the said quarrel. Except disclosing about boundary dispute and pushing the victim and her mother to the ground for the said dispute no other allegation was brought by the said important witnesses regarding commission of rape upon the victim by the accused. The independent witnesses, Saleha Begum, Zinnat Ali also did not support the prosecution case. They only stated about some quarrel between the victim's mother and the accused for some boundary dispute.
- 15. As evidence is lacking regarding the fact that victim was raped by accused or that penetrative sexual offence was committed by the accused upon the victim so I have no other option but to acquit the accused on benefit of doubt.
- 16. Prosecution has miserably failed to prove the case against the accused u/s-376 r/w section 4 of the POCSO Act. Accordingly, accused Safikul Islam is acquitted from the above mentioned section.
- 17. The accused Safikul Islam will go on a fresh bail of Rs.10,000/- with one surety of like amount u/s-437-A IPC assuring that he will appear before the higher court as and when such court issue notice in respect of any appeal or petition filed against the judgment and order of this court.
- 18. Judgment is pronounced at the open court in presence of the accused.

19. Judgment written in separated sheet be kept with record.

Given under my hand and the seal of this court on this the 4^{th} day of Feb/2019.

Send a copy of judgment to District Magistrate, Nalbari.

Dictated and corrected by me

Session Judge, Nalbari.

Sessions Judge, Nalbari.

Contd.

APPENDIX

A. <u>Prosecution witness</u>.

PW-1 Dr. Dipti Choudhury(M).

PW-2 Musstt. Sabiha Begum.

PW-3 Musstt. Rahima Khatoon.

PW-4Md. Zinnat Ali.

PW-5 Md. Saiful Islam.

PW-6 Musstt. Aimana Begum.

PW-7 Saleha Begum.

B. <u>Defence witness.</u>

Nil.

C. <u>Prosecution Exhibit.</u>

Ext-1 Medical report.

Ext-2 X-Ray report.

Ext-3 Ejahar.

D. <u>Defence Exhibit.</u>

Nil.

Sessions Judge, Nalbari.