IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>56 OF 2017</u>

(Under Section **4** of the POCSO Act, r/w Section **120-B** of IPC, arising out of GR Case No 2896 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Md Faruk Ahmed, S/o Jakir Hussain,

2.Md Mustafa Ali, S/o Jonab Ali,

Both are of Vill- Dhalagurigaon, Singri,

P.S. – Dhekiajuli Dist- Sonitpur.

Date of framing charge :- 07-05-2018.

Date of Recording Evidence 21-05-2018.

Date of examination of accused u/s :- 21-05-2018.

313 of Cr.P.C.

Date of Argument :- 21-05-2018.

Date of Judgment :- **21-05-2018.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Mr F Haque, Advocate.

<u>JUDGMENT</u>

1. In this case accused persons Mustafa and Faruk are put for trial for the allegation of charge under Section 4 of the POCSO Act, r/w Section 120-B of IPC.

- 2. The factual matrix according to the FIR in brief is that on 27-07-2017, while the informant's 3rd minor daughter Smti 'X' returned from Balijan Chowk after marketing reaching near Dhalaguri LP School , taking advantage of darkness, accused persons along with another one gagged her mouth and thereby gang raped on her. On the very night of 27-07-2017, the informant's victim daughter was sent to hospital and thereafter she was again sent for treatment on 30-07-2017. Hence, this prosecution case.
- 3. The ejahar was filed by the informant Sri Mahadeb Tudu before the I/c Singri Out Post on 01-08-2017.
- 4. On receipt of the ejahar, I/C Singri Out post made GD Entry No 03 dated 01-08-2017 and forwarded the same to OC, Dhekiajuli PS for registering the case. Accordingly, O/C, Dhekiajuli Police Station registered the case vide Dhekiajuli Police Station Case No 681/17 under Section 5(g)/6 of POCSO Act. After completion of investigation, O/C, Dhekiajuli Police Station sent up the case against the accused person under Section 120-B/376 of IPC.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 4 of POCSO Act, r/w Section 120-B of the IPC. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined as many as seven nos of witnesses. After completion of evidence of victim, learned Counsel for the accused submitted to close the prosecution evidence on the ground that statement of victim and other witnesses no way supported the prosecution case. Therefore, it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. On perusal of the statement of complainant, victim and other witnesses including the complainant who is the father of victim, I think that prosecution case would not develop, even if examine the other prosecution witnesses, as they were no way supported the prosecution case. Speedy trial is the right of the accused person. So, for to secure ends of justice, prosecution evidence is closed.

- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused persons and the allegations made against the accused person are put before me for his explanation where they denied the allegations and declined to give defence evidence.
- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that
 - (1) "Whether the accused, on or about 6 PM of 27-07-2017, near Dhalaguri LP School under Dhekiajuli PS, agreed with an unknown person to do(or to cause to be done) an illegal act, to commit penetrative sexual assault, (an act which is not legal or by illegal means and that the same act, viz to penetrative sexual assault, was done in pursuance of the agreement0 and on the said day, committed penetrative sexual assault on Miss"X" (14 years of age) and thereby committed an offence punishable under Section 120-B of IPC, r/w Section 4 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- 12. **PW1-** Sri Mahadeb Tudu, the complainant of this case deposed that he knows both the accused persons as they are his co-villagers. He is the complainant of this case. Ext.1 is the ejahar and Ext.1(1) is his signature. The incident took place on 27-07-2017. At the time of incident, his victim daughter Miss "X" was 14 years old. She was studied at Class-IX standard. On the relevant day at about 6 PM, his daughter asked her Rs/10/- for her marketing. Accordingly, he has handed over Rs.10/- to her. Then she went to Balijan Market. At about 6.30 PM one Dhiraj informed him that accused persons were apprehended by local public along with his daughter at Dhalaguri LP School. Accordingly, he went to the said School with "halowa-achari". He heard that accused persons were apprehended by Sanjay

Munda and Dhiraj Tudu and took them to the house of one Debra Hemrom. He also went there. He slaps his daughter. Then he took his daughter to his house and while he asked her about the incident, she becomes fainted. He called 108 ambulance and took her to Jangalbosti PHC for her treatment. When she regains her sense, on being enquiry, she told her that she was falsely implicated. In the next Sunday a village meeting was held while the villagers advised him to file the case. Accordingly, he filed this case. After instituting the case, his victim daughter was examined medically and her statement was recorded by police as well as through the learned Magistrate and then she was given custody to her. Police recorded his statement. While police recorded his statement, he has stated to IO that while victim returned from market from Balijan Chowk and while she reached near Dhalaguri LP School, taking advantage of darkness, accused Mustafa and Faruk Ali and another boy by gagging her mouth dragged her towards the School and committed gang rape to her. While she raised alarm, they fled away. As he was busy in treatment of his daughter, so, it becomes delay in filling the ejahar.

In cross-examination, he admitted that he has not seen the incident personally. His victim daughter did not tell him what he has stated to police. It is a fact that he has made such statement before the IO under the pressure of the villagers. Actually his daughter told him that accused did not commit any bad act to her. In fact he has slapped his daughter on being angered after hearing rumor from other villagers. In fact there was no such incident took place. He further admitted that Ext. 1 was written by one scribe and he has only put his signature thereon. The scribe did not read over the contents of the ejahar to me neither it was written on his instruction.

persons as they are his co-villagers. He also knows the victim and her father who is the complainant in this case. The incident took place about 9/10 months ago. He heard that an incident took place near Dhalaguri LP School at about 6/7 PM. After 3/4 days of the said incident a village meeting was held for the said incident. He was present there as a human right activist. Thereafter, the girl was admitted at 30 beded hospital at Dhekiajuli. The victim girl stated before the meeting that while she returned from Balijan market, reached near the Dhalaguri LP School, accused Mustafa and Faruk gagged her mouth, took her inside the LP school. She also stated that accused persons committed rape on her. On being seen by Dhiraj and Sanjay

she was recovered. The girl made such statement in presence of 150/200 villagers. The girl was in between 14-16 year at the relevant time.

In cross-examination he admitted that he has not seen the incident personally.

14. **PW3-** Krishna Kanta Mazhi deposed that he is a human right activist. He knows both the accused Faruk and Mustafa. The incident took place in the month of July,2017. He knows the complainant and victim of this case. He knows about the incident after two days of the incident. He heard from the villagers that victim was raped by accused Faruk and Mustafa.

In cross-examination, he stated that he has good relation with victim and the complainant. While they enquired about the incident to the complainant and victim, they stated that the whole incident is false one. It is a fact that some of the villagers mislead the complainant to malice the victim girl and also to file the case falsely implicating the accused persons. As a social worker, he came to know lateron that there is no such incident took place as alleged.

15. **PW4-** Sri Siba Kanta Tudu turned hostile by the prosecution. The unhostile portion of his evidence is that he knows both the accused persons who are their co-villagers. He also knows the complainant as well as the victim of this case. The incident took place about 10 months ago. On the day of incident, he was not present in the village. In the next day, he came to know that while the victim was talked to the accused persons, some people were apprehended them and scolded them. Other than that he do not know anything about the incident. Police recorded his statement. Then he turned hostile.

In cross-examination he stated that complainant Mahadeb is his elder brother and the victim is his niece. Complainant and victim did not inform him about the commission of rape by the accused persons. In fact, they informed him that some villagers suspected his niece and that two accused persons of being involved in some bad act and hence, they assaulted his niece "X". Hearing such allegations from the villagers, victim's father got angered and he assaulted the victim. In fact there is no such alleged rape incident took place. In fact, he never stated to IO that he has heard that victim was raped by the accused persons.

16. **PW5-** Smti Sunita Tudu also turned hostile by the prosecution. The un-hostile portion of his evidence is that victim is her younger sister and at the relevant time her victim sister was aged about 15 years of age. The incident took place in the month of July. When her younger sister went back from Balijan Market the incident took place. On hearing hulla near the Dhalaguri LP School, she went there. She saw gathering in the school. She found her victim sister was trembling and standing there. She slapped her twice. When her younger sister came to home, she became senseless. Then they called ambulance and took her to the hospital. When she regained her sense, she asked her but, she did not state anything to her. When she was taken to their house, many people gathered there. Police recorded her statement. Then she turned hostile.

In cross-examination, she stated that due to misunderstanding of facts, he r father filed the case against the accused persons and misunderstanding resulted from the pressure and misleading information by some villagers. She has not deposed falsely to save the accused persons.

17. **PW6-** Sri Dhiraj Tudu who also turned hostile by the prosecution stated that victim is his niece. The incident took place in the month of July. At that time he was at Balijan Centre. When he heard hulla in the Dhalaguri LP School, he goes forward to the said place and came to know that his niece was talked with some boy. Other than that there is no other incident took place.

In cross-examination, he stated that he has not seen any incident of rape. His victim niece also did not state anything before him regarding any commission of any rape by any of the accused persons.

18. **PW7-** Miss "X", the victim of this case on 27-07-2017 the incident took place. At the relevant time, she was only 15 years old. The incident took place about 6/6.30 PM. At the relevant time she was returning from Balijan Centre when she reached near the Dhalaguri LP School, she met the accused persons and talked for a while. She told them that she was came from Centre by bringing some vegetables. Immediately, her uncle Dhiraj arrived there. On being seen her in talking with the accused persons, he slap her and as a result, situation become hot. His father has also arrived there. His father has also slapped her twice for talking with the said two boys. On her arrival at home, she become senseless and so, she was admitted at Hospital. In the next day her father filed this case against the accused.

After instituting the case, she was medically examined and her statement was recorded through the learned Magistrate. Ext.2 is the said statement and Ext.2 (1),2(2) and 2(3) are her signatures.

In cross-examination, she admitted that she talked normally with accused Faruk. Other than normal talk, she did not make any other talk. Neither accused committed any misdeed to her. As she talked with the two boys in a remote area, so, local people raised objection. At the instigation of local public, her father filed this false case. She clearly stated that her father due to misunderstanding filed this case. Accused persons did not commit any misdeed to her neither rape her. At the pressure and instigation of local public she made such statement before the learned Magistrate as the local public stated that if she did not make such statement according to their instructions they would be driven out their family from the village. That is why, in Ext.2, she made such false statement. In fact, there was no such incident took place. At present, she has no objection, even if the accused persons are enlarged on acquittal, in fact due to ascent and fear she lost her sense.

- 19. These much is the prosecution evidence.
- 20. The accused persons denied their allegations while their statement are recorded under Section 313 of the CrPC.
- 21. I have heard the argument put forward by the learned Counsel for both the parties.
- 22. Learned Counsel for the accused submitted that prosecution has failed to prove the case beyond any reasonable doubt. As the victim girl herself giving good bye to the prosecution by stating that her father has falsely filed this case against the accused persons. Besides, she clearly stated that they are innocent persons, so, she has no objection even if the enlarged them on acquittal. Her father i.e. the complainant also stated so in the Court. Learned PP also conceded.
- 23. To prove the charge under Section 4 of POCSO Act, prosecution must prove –

Penetrative Sexual Assault. A person is said to commit "**Penetrative sexual Assault**" if –

- "a) he penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a child or makes the child to do so with him or any other person;
- b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body or the child or makes the child to do so with him or any other person; or
- d) he applies his mouth to the penis, vagina, anus, urethra or the child to do so to such person or any other person".
- 24. In this type of cases, the evidence of victim is much more important. Here in this case, **PW7**-the victim, prosecutrix nowhere stated that accused persons committed penetrative sexual assault to her. She even clearly stated that accused persons did not commit any misdeed to her. She only talked with them. She further stated that though she made statement before the learned Magistrate under Section 164 CrPC, but, that statement was made at the instigation of villagers as the villagers threatened her to driven their family from the village if she did not made statement as their instruction. She clearly stated that i.e why she resolved to make false statement. As stated above, victim nowhere stated that accused committed any of the ingredients as defined in Section 3(a),(b),(c) & (d). Besides that, father of the victim i.e. the complainant of this case himself gives good bye to the prosecution case stating that his victim daughter did not told her what he had stated to police. He also stated that it is a fact that he has made such statement before the IO under the pressure of villagers. Actually, the victim told her that accused did not commit any bad act to her. He also stated that in fact, he has slapped his daughter on being angered after hearing the rumour from other villagers. In fact, there is no such incident took place. As such the complainant has also no way supported the prosecution case.
- 25. Under such circumstances, when the case is not supported by the victim and the complainant, so, it would be futile to drag the case by seeking ay other evidence, particularly the IO. Therefore, none of the ingredient of the alleged charged is proved by prosecution. Hence, charge under Section 4 of POCSO Act, r/w Section 120-B of the IPC is failed.

- On careful perusal of the whole case record, it appears that prosecution has categorically failed to prove the alleged charge against the accused persons. Hence, I do not have any hesitation to acquit the accused. Accordingly, accused persons **Mustafa Ali and Faruk Ahmed** are acquitted and set them at liberty forthwith.
- 27. The liability of the bailor is hereby discharged.
- 28. Send back the LCR.

Given under my Hand and Seal of this Court on this the **21**st day of **May, 2018**.

(A. K. Borah) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

APPENDIX

Witnesses examined by the prosecution:

- 1.PW1 Sri Mahadeb Tudu, Complainant,
- 2.PW2 Sri Dip Hazarika,
- 3.PW3 Sri Krishna Kanta Mazhi,
- 4.PW4 Sri Siba Kanta Tudu,
- 5.PW5 Smti Sunita Tudu,
- 6.PW6 Sri Dhiraj Tudu &
- 7.PW2 Miss "X" (victim).

Documents exhibited by the prosecution:

1. Ext. 1 : The ejahar.

2. Ext. 2: Statement of the victim recorded under Section 164 CrPC.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.