IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.06/2018

U/S-4 of POCSO Act, 2012 R/W Section 506 of IPC

State of Assam

-Versus-

Rabiul Hussain

s/o-Alek Ali

Resident of vill -Borbhitha

P.S.-Chhaygaon

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor ------for the

State

K. Choudhury, Ld. Advocate ------for the accused

Date of evidence: 01.04.2019

Date of Argument:03.04.2019

Date of Judgment:03.04.2019

JUDGEMENT

- 1. The case, in brief, is that on 28.9.17, the complainant Mustt Margina Begum lodged an ejahar alleging that on 27.9.17 at about 8 pm, accused-Rabiul and some unknown persons entered her house and took her away on a motor-cycle to the Hatipara paddy field and raped her. Hence, the case.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 807/2017 U/S-506/342 of IPC R/W section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-506/342 of IPC R/W section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 4 of the POCSO Act, 2012 R/W section 506 of IPC against accused— Rabiul Hussain. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as three (3) numbers of witnesses including the informant and victim. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINT FOR DETERMINATION**

- (I) Whether the accused person on 27.09.2017 at village—Barbhitha under Chhaygaon P.S, committed penetrative sexual intercourse upon the prosecutrix, and, thereby, committed an offence punishable U/S 4 of the POCSO Act, 2012?
- (II) Whether the accused on the same day, time and place committed criminal intimidation by threatening the prosecutrix to kidnap her and, thereby, committed an offence punishable U/S-506 of IPC?

6. **DISCUSSION, DECISION AND REASONS THEREOF**

Perused the record. Prosecution examined 3 (three) witnesses. Let us go through the evidences available on record.

- 7. Pw-1 Mustt Marjina Begum is the informant as well as the victim in this instant case. She deposed that she knew the accused- Rabiul and they were having love-affairs. She stated that the incident took place about a year ago at 7.00 pm. On the relevant night, the accused came to meet her. Pw-1 disclosed that no incident as alleged in the ejahar had taken place with her. As the accused refused to marry her, so she gave a false case against him to compel him to marry her. Pw-1 revealed that she gave false statement before the Magistrate. Ext-1 is the ejahar. Ext-1 (1) is her signature. Ext-2 is the statement u/s 164 Crpc and Ext-2 (1) is her signature.
 - 8. Pw-2 Saiful Nessa is the mother of the victim (pw-1). She deposed that she was not present in the house at the time of occurrence. When she returned home, she did not find the victim at home. Pw-2 stated that next morning, pw-1 returned home and told her that she had love affair with the accused and had gone away with him. This witness disclosed that the victim lodged the ejahar out of anger as the accused refused to marry her. But, no incident as alleged by the victim had taken place.
 - 9. Pw -3 Mansur Ali @ Mansab Ali is the father of the victim (pw-1). He deposed that there was love affair between the victim and the accused. And on the date of occurance, the informant went with the accused to get married but the accused did not marry her. Pw-3 revealed that the victim gave a false case against the accused as he refused to marry her.
 - 10. I have heard the arguments of both the sides. Perused the evidences on record.
- 11. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."

- 12. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. 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; or
 - (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 the body of 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 of the child or makes the child to do so to such person or any other person.
- 13. Now, in this instant case, there is no allegation by the victim girl of any penetrative sexual assault or any kind of sexual assault upon her by the accused person. The victim (P.W.1) made it clear in her evidence that the accused did not commit any penetrative sexual assault on her on the date of occurrence. No incident as alleged in the ejahar took place. Other P.Ws also supported the evidence of P.W.3 and confirmed that no such incident as alleged in the ejahar had taken place. P.W.1, the informant/victim has stated that as the accused refused to marry her, she gave a false case against him to compel him to marry her. P.W.2 and P.W.3 also made it clear that victim had love affair with the accused and she had gone away with him and she (P.W.1) lodged the ejahar out of anger as the accused refused to marry her. So, the offence U/S- 4 of the POCSO Act is not at all attracted in this instant case.
- 14. Coming to Section 506 IPC, it has come out clearly from the evidence of P.W.1 that the accused did not threaten the prosecutrix. So, the offence U/S-506 IPC is also not attracted in this case.
- 15. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person— Rabiul Hussain. Accordingly, the

accused is held not guilty and he is hereby acquitted of the offence U/S-4 of the POCSO Act R/W Section 506 of IPC, and set at liberty forthwith.

- 16. His bail bond stands cancelled. Bailor is discharged from the liabilities.
- 17. The case is disposed of on contest.
- 18. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 03rd day of April, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

Pw-1 Mustt Marjina Begum

Pw-2 Saiful Nessa

Pw -3 Mansur Ali @ Mansab Ali

Prosecution Exhibit

Ext.1 is the ejahar.

Ext.2 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Special Judge, Kamrup, Amingaon