IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon Present: Smti. B. Kshetry Addl. Sessions Judge, Kamrup, Amingaon Special Sessions (POCSO) case No.07/2017 U/S-State of Assam -Versus-1. Md. Akkas Ali s/o-Lt. Habibar Rahman 2. Abdul Barek s/o-Md. Asmahammad Both are resident of vill -Nagarbera Reserve P.S.—Nagarbera Dist- Kamrup -----Accused Appearance: Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State -----for the accused Anowar Paramanik, Advocate Date of evidence: 03.08.2018, 01.09.2018 and 15.09.2018

Date of Argument:15.09.2018

Date of Judgment:15.09.2018

JUDGMENT

- The Prosecution case in brief is that—on 02.10.2016 the informant lodged an FIR alleging that on 17.05.2016 the accused persons Akkas Ali and Abdul Barek committed rape on his minor daughter and also threatened the victim girl to kill her if she disclosed the incident to anyone. And hence, this ejahar.
- 2. On the basis of the said ejahar, Nagarbera P.S Case No. 159/2016 U/S-354 (B)/376 (D) IPC R/W Section 4/6 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 persons U/S-354 (B)/376 (D) IPC R/W Section 4/6 of the POCSO Act, 2012.
- 3. The case was duly committed by the Learned Trial Court and this Court after hearing both the parties, framed charges U/S- 354 (B)/376 (D) IPC R/W Section 4/6 of the POCSO Act, 2012 against accused persons—Md. Akkes Ali and Md. Abdul Barek. The aforesaid charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as four (4) numbers of witnesses including the informant and victim. Statement of the accused persons U/S-313 Cr. P.C is dispensed with as there are no incriminating materials against them.

5. POINT FOR DETERMINATION

- (I) Whether both the accused persons on 17.05.2016 at 8.00 P.M at village Nagarbera used criminal force to the minor girl of the informant, or abeted such act with the intention of disrobing or compelling her to be naked and thereby committed an offence punishable U/S-354 (B) IPC ?
- (II) Whether both the accused persons on the same date, time and place committed gang rape upon the victim and thereby committed an offence punishable U/S-376 (D) of IPC?

- (III) Whether both the accused persons on the dame date, time and place committed penetrative sexual intercourse upon the victim, aged below 16 years and thereby committed an offence punishable U/S 4 of the POCSO Act, 2012?
- (IV) Whether both the accused persons on the same date, time and place committed aggravated penetrative sexual assault upon the victim, aged below 16 years and thereby committed an offence punishable U/S-6 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined 4 (four) witnesses.
- 7. P.W.1, Mir Kasem Ali, is the informant of this instant case. He has stated in his evidence that he knows both the accused persons. The victim girl is his granddaughter. He further deposed that the incident took place about 2 years ago at around 8 p.m. The house of the victim girl is adjacent to his house. On the day of occurrence he (P.W.1) was at his home. The victim was studying at the time of occurrence, then the accused persons came to the house of the victim girl. When the victim girl saw the accused persons, she out of fear raised hue and cry. And thereafter, he came running and suspected that the accused persons tried to commit some bad act with the victim girl. After that he lodged the ejahar.
- 8. In his cross-examination, P.W.1 has stated that the accused persons did not commit any bad act upon the victim girl.
- 9. P.W.2, is the victim (Prosecutrix) of this instant case. She deposed in her evidence that— the informant is her grandfather and the accused persons are her neighbours. The incident took place on 01.10.2016 at about 8.00 p.m. On the day of occurrence, when she was studying for her ongoing exam in her room, then the accused persons came to her house. When she saw the accused persons, she out of fear shouted,

then her grandfather and her mother came and out of suspicion that the accused persons had tried to commit some bad act with her, her grandfather lodged an ejahar against the accused persons. Then, the accused persons fled away when she raised hue and cry. Thereafter, police arrived and brought her for medical examination and also brought her to the Court before the Magistrate for recording her statement U/S-164 Cr. P.C. Ext.1 is the statement and Ext. 1 (1) to 1 (5) are her signatures.

- 10. In her cross-examination, she deposed that the accused persons did not commit any bad act with her. She further deposed that she gave her statement before the Magistrate and before the police as tutored by the village people.
- 11. P.W.3, Narima Khatun, is the grandmother of the victim. Informant is her husband. She has stated in her evidence that she knows the accused persons. P.W.3 further deposed that the incident took place about 2 years ago in the evening time. She stated that the victim used to stay with her. P.W.3 disclosed that there was a land dispute between the accused persons and the informant (P.W.1). On the day of occurrence, the accused persons chased the victim inside the house and so, she got frightened and raised hue and cry. On hearing her shouts, P.W.2 along with her husband came to the spot but the accused persons fled away.
- 12. In her cross-examination P.W.4 has deposed that the ejahar was given by her husband out of some mis understanding. The accused persons did not do any bad act with her.
- 13. P.W.4, Mehena Khatun has deposed in her evidence that the informant is her father. And the victim is her sister's daughter. She also know the accsued persons. She further deposed that he incident took place a year ago at about 6.30/7.00 p.m. she was near the place of occurrence. She did not see the occurrence. And on hearing 'hullah' she came to the house of the victim and saw her crying. Later, she came to know that the victim was frightened on seeing the accused persons, who came to her house as she was alone. She further deposed that she did not know anything apart from this, as she returned back to her home.
- 14. I have heard the arguments of both the sides. Perused the evidences on record.

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15. Now, in this instant case, there is no allegation by the victim girl of any penetrative

sexual assault upon her by the accused persons. The victim (P.W.2) made it clear in

her evidence that the accused did not commit any kind of sexual assault on her on

the date of occurrence. Her version is that she gave her statement U/S-164 Cr. P.C

as tutored by others. Other P.Ws also supported the evidence of P.W.1 and

confirmed that no such incident as alleged in the ejahar had taken place. P.W.3

disclosed that the ejahar was lodged against the accused persons due to some

misunderstanding. So, the offences U/S- 354 (B)/376 (D) IPC R/W Section 4/6 of the

POCSO Act, 2012 are not at all attracted in this instant case.

16. In the result, the prosecution has miserably failed to prove the case beyond all

reasonable doubt against the accused persons—Akkas Ali and Abdul Barek.

Accordingly, the accused persons are held not guilty and they are hereby acquitted

of the offences U/S-354 (B)/376 (D) IPC R/W Section 4/6 of the POCSO Act, 2012

and set at liberty forthwith.

17. Bailors are discharged from the liabilities of the bail bonds.

18. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 15th day of September, 2018

Special Judge,

Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1 – Mir Kasem Ali

P.W.2— victim (Prosecutrix)

P.W.3 – Narima Khatun

P.W.4 – Mehena Khatun

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Prosecution Exhibit

Ext.1 -- Statement of the victim recorded U/S-164 Cr. P.C.

Special Judge,

Kamrup, Amingaon