# IN THE COURT OF SPECIAL JUDGE NAGAON.

Present- A. Rahman, LL.M, AJS

## Special (POCSO) case No- 99(N) / 2018.

U/S- 6 of the POCSO Act R/W S-376 IPC.

Parties -

-----State -----

-Vs-

Sahil Ahmed.

S/O- Abu Mussah Ahmed.

Resident of Azad Nagar.

PS- Nagaon (Sadar)

Charge framed on – 10-6-2019.

Evidence recorded on -16-8-2019

Argument heard on - 16-8-2019.

Judgment delivered on - 16-8-2019.

## Appearance -

For the prosecution- Mr. M.J. Neog, learned special prosecutor.

For the defence - Mr. T. Islam, learned Advocate.

### J U D G E M E N T

The instant Special case was registered on the basis of a charge sheet filed by police in connection with Nagaon PS case No-2903/2018 registered U/S-4 of the POCSO Act.

The facts of the prosecution case in brief are as follows-

One Miss X ( name withheld for anonymity) lodged Ext- 4 written FIR dated 28-8-2018 with the officer in charge of Nagaon police station to the effect that on 11-7 2018 , her neighbour ,accused Sahil Ahmed, eloped away her. On the basis of the FIR lodged by her mother, police recovered her and handed over to her mother. On 14-7-2018, accused again eloped away her to Tezpur where they spent one night. Thereafter, he brought her to his house. The accused committed rape her on several occasions at his house after promising to marry her. His parents subjected her to physical and mental torture and demanded her to bring money from her mother. Further allegation of the complainant is that on the date of lodging the FIR, the accused and her parents tried to kill her by pouring kerosene oil but she begged her life. They obtained her signatures on some blank papers and drove her out.

On the basis of the FIR, the criminal investigation was started. Police arrested accused Sahil Ahmed and forwarded him to the court for judicial custody.

Upon completion of investigation, charge sheet U/S- 376 IPC r/w S-4 of the POCSO Act was submitted. According the instant Special case was registered. The case was transferred to this court for trial.

After appearance of the accused before this court, both sides were heard on the point of charge. Considering the materials on record, charge U/S- 4 of the POCSO Act read with S-376 IPC were framed against the accused person. He denied the charges and claimed to be tried.

Prosecution during trial examined two witnesses including the alleged victim as well as her mother. The victim was examined as PW-2 while her mother was examined as PW-1. Considering the evidence of the said vital witness and submission of learned Special Prosecutor, further prosecution evidence was closed for the obvious reason that examination of further witness would be a futile exercise.

The accused was examined U/S-313 crpc. He denied the allegation of the prosecution and declined to adduce evidence.

I have heard Mr. M. J. Neog, learned Special prosecutor as well as Mr. T. Islam, learned Advocate for the defence. Also carefully scrutinised the evidence and the case record.

Now the point for determination is as follows-

Whether the accused committed penetrative sexual assault (sexual intercourse) upon the informant –cum victim at his house against her will and consent and as such committed offence U/S- 4 of the POCO Act and also offence U/S-376 IPC as alleged?

#### Discussion & Decision with Reasons Thereof:

- 1. Before entering in to appreciation and analysis of the evidence so as to ascertain whether accused has committed the offences charged with or not, it is utmost essential to take a glimpse of the relevant statement of the witnesses.
- 2. PW-1 has deposed that PW-2 is the informant as well as her daughter. She was previously residing in a rented house nearby the house of accused Sahil Ahmed. On account of love affairs, her daughter fled away to the house of the accused last year. There developed a quarrel in between her daughter (PW-2) and accused Sahil for which she lodged the case. She has categorically stated that in the month of April this year, the accused performed Nikah with PW-2. At the relevant time of occurrence, her daughter was above 17 years. She has submitted Ext-3 birth certificate of PW-2 which police seized and subsequently gave zimma to her vide Ext-2. She has confirmed that Ext-2(1) is her signature. Ext-1 is the seizure list.
- 3. In cross examination, PW-1 has made it clear that there was love affairs between PW-2 and the accused for about three years. There was good visiting terms between the two families. Now her daughter is leading conjugal life with the accused at his house.
- 4. PW-2 has testified that due to love affairs with the accused, she voluntarily fled away to his house and returned home when her mother had lodged a case. But subsequently she again fled away to his house. During her stay at his house, she quarrelled with him on the suspicion that he was in affairs with another girl named Afrin. She has proved that Ext-4 is the FIR lodged by her and Ext-4(1) is her signature. She has also confirmed that Ext-5 is her statement recorded by Magistrate. Ext-5(1) to Ext-5(3) are

her signatures. He Nikha with the accused was performed in the month of April this year.

- 5. She has replied in her cross examination that at the relevant time of occurrence, the villagers did not perform her marriage with the accused as she did not attain marriageable age. She has clearly stated until performance of her nikah (marriage), there was no physical relation in between them. She gave her Ext-5 statement as tutored. Now she is leading conjugal life with the accused.
- 6. Now from the aforesaid oral evidence of PW-1& PW-2, it is proved that there was love affairs between PW-2 and the accused. As such prior to the alleged occurrence, once she voluntarily wen to his house. After lodging a case, she was recovered. But again she voluntarily wen to the house of the accused and started staying there.
- 7. PW-2 in her Ext-4 FIR mentioned that her date of birth is 5-3-2001 and the alleged occurrence took place on 11-7-2018. Ext-3 also proves that PW-2 was born on 5-3-2001. So on the date of alleged occurrence, she was 17 years 4 months and 6 days.
- 8. It is well settled that statement of a witness recorded U/S-164 CrPC is not a substantive piece of evidence which may be used for corroboration or contradiction. While deposing before the court, PW-2 has not stated nay thing that the accused made any physical relation with her. Rather she stated that before performance of Nikha in the month of April this year (2019), no physical relation happened between them. Thus she does not support her allegation of forcible sexual intercourse made in Ext-4 FIR against the accused. She also does not support her statement vide Ext-5 regarding any physical intercourse with the accused. Under such circumstance, the presumption U/S-29 of the POCSO Act that the accused committed penetrative sexual intercourse with PW-2 cannot be drawn. In order to draw the statutory presumption under the said section, the prosecution has to adduce some positive evidence at least to show that there was probability of committing the offence. Then only the burden upon the accused would be shifted to rebut the presumption.
- 9. It is also proved from the evidence of PW-1& PW-2 that in the month marriage (nikah) between PW-2 and the accused was performed in the month of April after she has attained the majority.

- 10. In view of the above discussions of evidence, it found that the prosecution has failed to prove the offence U/S-4 of the POCSO Act against the accused person beyond reasonable doubt. Hence the accused is entitled to get acquittal on benefit of doubt.
- **11.** Accordingly the accused stands acquitted on benefit of doubt. The bail bond shall remain extended for another six months in the spirit of S-437 A CRPC.
- 12. The judgement is declared and delivered in the open court under my hand and seal this 16<sup>th</sup> Day of October 2018.

(A. Rahman, AJS)

Special Judge, Nagaon.

Judgement prepared & corrected by me.

(A. Rahman, AJS)

Special Judge, Nagaon.

#### -APPENDIX-

#### Prosecution witness-

- 1. PW-1 informant.
- 2. PW-2 informant as well as the victim.

## -Exhibits-

Ext-1 - Seizure list.

Ext-2 Zimma nama.

Ext-3 birth certificate.

Ext-4 ejehar (FIR)

Ext-5 statement U/S-164crpc.

**Defence witness & Exhibits**- Nil.

(Md. A. Rahman, AJS)
Special Judge , Nagaon.