## IN THE COURT OF THE SPECIAL JUDGE :::::::::::::::::: GOALPARA.

Present: Shri T.K. Bhattacharjee, AJS. Special Judge, Goalpara

## Special (POCSO) Case No. 15/17

u/s: 417/313/506 of the IPC read with section 4/8 of POCSO Act.

#### State of Assam

#### -Versus-

Md. Sanowar Rahman ...... Accused.

### **Appearance:**

For the prosecution: Mr. S. Sarma, learned Special Public Prosecutor.

For the defence : Mr. S. Rahman, learned Advocate.

Dates of evidence : 18.03.2019; 01.07.2019; 29.07.2019; 02.09.2019

Date of Argument : 27.09.2019.

**Date of Judgment: 01.10.2019.** 

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

- 1. The brief facts of the prosecution case as unfurled from the ejahar dated 08-01-2017 is that on 09-11-2016 the accused Sanowar Rahman committed rape upon the minor daughter of the informant as a result of which she became pregnant and subsequently the accused threatened the victim and 03-01-2017 the said accused administered a tablet to the victim and terminated her pregnancy and hence the case was filed.
- 2. On receipt of the information to that effect, Matia PS Case No. 07/17 was registered u/s 417/376/313/506 of IPC read with Section 4 of the POCSO Act and after completion of the investigation, a charge-sheet was submitted against the above named accused person u/s

417/313/506 of IPC read with section 4/8 of the POCSO Act sending him up for the purpose of trial.

- 3. Thereafter, on appearance of the said accused person before this Special Court, the relevant copies were furnished to him and thereafter, vide order dated 03.02.2018, charges u/s 417/313/506 of the IPC and section 4/8 of the POCSO Act were framed against the said accused and the contents of the said charges was read over and explained to him to which he pleaded not guilty and accordingly, the trial of this case commenced.
- **4.** In the course of trial, 7(seven) witnesses were examined in support of the prosecution case which included the informant, the victim, the Medical Officer and the Investigating Officer of this case and after the prosecution evidence concluded, the examination of the accused u/s 313 of the Cr.P.C was conducted and his statements were recorded during which he declined to adduce any evidence in his defence.
- **5.** Thereafter, the arguments of the respective learned counsels of both the sides were heard and the entire evidence in the case record was also perused.

### 6. POINTS FOR DETERMINATION:

- (a) Whether on or about the 09-11-16 at about 3 to 4 pm the accused Md. Sanowar Rahman cheated the daughter of the complainant by having sexual intercourse with her with a promise to marry her, as alleged?
- **(b)** Whether on or about the 03-01-17 at about 6 pm the accused Md. Sanowar Rahman voluntarily caused the victim Nurjahan Begum, then being with a child, to miscarry without

her consent, such miscarriage not being caused in good faith for the purpose of saving her life, as alleged?

- **(c)** Whether on or about the same date, place and time the accused committed criminal intimidation upon the daughter of the informant, as alleged?
- **(d)** Whether on or about the 09-11-16 at about 3 to 4 pm the accused Md. Sanowar Rahman committed penetrative sexual assault upon the daughter of the complainant, as alleged?
- **(e)** Whether on or about the 09-11-16 at about 3 to 4 pm the accused Md. Sanowar Rahman committed sexual assault upon the daughter of the complainant, as alleged?

### **DISCUSSION, DECISION AND REASONS:**

- 7. The PW-1 was the informant of this case who had filed the ejahar vide Ext.-1 and from his testimony it is found that the victim of this case is his daughter and that the accused and his daughter were having a love affair and sexual relationship which was not appreciated by the PW-1 for which he filed this case. His testimony also shows that now they are living peacefully as husband and wife. Further, the PW-1 also stated that he do not wish to proceed with this case.
- **8.** The PW-2, was the victim of this case, who stated in her examination-in-chief that she was having a love affair with the accused and accordingly, she proposed for a marriage but the accused was reluctant initially for which her father filed the case but subsequently they got married and now they have been living peacefully as husband and wife and she also stated that she is now pregnant. During her cross-examination she stated that this case was filed by her father out of misunderstanding and that she gave her statement before the magistrate vide Ext-2 on the directions of her father.

- **9.** The PW-3 was Jayada Khatun, who is the wife of the informant and mother of the victim and from her testimony it is found that her daughter had a love affair with the accused and when her husband (PW-1) came to know about it he filed this case against the accused as the accused refused to marry her daughter (victim of this case) at that time. She also stated in her examination-in-chief before the court that the accused is now married to her daughter and living peacefully as husband and wife.
- **10.** The PW-4 who was a relative of the informant and the PW-5 who was the sister of the victim failed to state anything incriminating against the accused person and their testimony corroborated with that of the mother of the victim (PW-3). Thus, the testimony of these witnesses could not help the prosecution case to any extent so far as the role of the accused person was concerned with respect to the charges that were framed against the accused.
- 11. The PW-6 was the Medical Officer who examined the victim on 09.01.2017 at Goalpara Civil Hospital and found the age of the victim to be above 18 years and below 20 years. Her medical report was brought on record as the Ext.-3 and from the Ext.-3; it is found that the pregnancy test was negative and there were no injuries upon the victim.
- **12.** The PW-7 was the police officer who took up the investigation of this case and finally submitted the charge-sheet against the accused person vide Ext.-7 and from his testimony it is found that during investigation he had prepared the sketch map vide Ext-4, seized a birth certificate of the victim vide Ext-5, seized a file of tablet namely Gestapro vide Ext.-6. etc.
- **13.** No other witnesses were examined by the prosecution in support of the case and during the arguments, the learned Special Public

Prosecutor submitted that necessary orders may be passed on the basis of the evidence on record and in accordance with law. On the other hand, the learned counsel of the accused submitted that the prosecution case is clouded with grave doubts as the witnesses did not support the prosecution story to any extent and moreover, the delay in filing the case without proper explanation has also created suspicion in the prosecution case and further, there is also lack of credible evidence by the prosecution for which the accused deserves to be acquitted.

14. On a careful scrutiny of the entire materials available in the case record, it is found that though the informant failed to support the prosecution story as reflected in the Ext-1 and moreover, the victim (PW-2) failed to state anything incriminating against the accused during her deposition in the court. The other PW's(i.e. PW- 3, 4 and 5) also failed to state anything against the accused and the PW-6, the Medical Officer found the age of the victim above 18 years. Further, the birth certificate of the victim which was seized vide Ext-5 was not produced before this court. On the other hand, during the deposition of the victim she categorically stated that this case was filed by her father as the accused refused to marry her initially. It may further be mentioned in this context that in a case of sexual assault, the testimony of the prosecutrix must be given prime consideration and the principle that the prosecution is required to prove its case beyond reasonable doubt and that the reliability of an witness depends on its credibility and trustworthiness would be required to be applied in a case of sexual assault also and taking into consideration all the above facts and circumstances, I am of the opinion that the prosecution case suffers from serious infirmities so far as the role of the accused person is concerned in the alleged offences and from the entire evidence on record as discussed above, it is apparent that there is a massive dent in the prosecution case and moreover, the admitted relationship between

Page | 6 of 8

the parties has added more clouds to the shaky prosecution case and therefore, taking into account all the above aspects, I am of the firm opinion that the prosecution has failed to establish the charges against the accused beyond reasonable doubt and that the ingredients of section 417/ 313/ 506 of the IPC read with section 4/8 of the POCSO Act are very much lacking in the instant case.

- **15.** Accordingly, the accused person namely Sanowar Rahman is not found guilty section 417/ 313/ 506 of the IPC read with section 4/8 of the POCSO Act beyond reasonable doubt and as such he is acquitted of the said charges and set at liberty forthwith. His bail bond shall however remain in force for the next six months. The Judgment, as mentioned above, is pronounced in the open Court.
- **16.** The seized tablets shall be destroyed in due course of time and in accordance with law and the seized birth certificate shall be returned to the person from whom it was seized.
- **17.** A copy of this judgment shall be forwarded to the learned District Magistrate, Goalpara and the Superintendent of Police, Goalpara for their information and necessary action.

Given under my hand and seal of this Court on this the 1<sup>st</sup> day of October, 2019 at Goalpara, Assam.

**(T. K. Bhattacharjee)** Special Judge, Goalpara.

Dictated & corrected by me:

Special Judge, Goalpara.

Continued to appendix..

# **Appendix:**

# <u>Prosecution Witnesses:</u> <u>Prosecution Exhibits:</u>

PW1:- Hazarat Billal, Ext.1: Ejahar,

PW2:- Nurjahan Begum, Ext.2: Statement u/s 164

Cr.P.C.,

PW3:- Jayada Khatun, Ext.3: Medical Report,

PW4:- Jarina Khatun, Ext.4: Sketch map,

PW5:- Nijara Begum, Ext.5: Birth certificate,

PW6:- Dr. M. Lagachu(MO), Ext.6: Gastapro tablet,

PW7:- Adam Ali Seikh(IO), Ext.7: Charge-sheet.

Court witnesses:-Nil. Defence Witness: Nil.

Special Judge, Goalpara.