

# DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:-

Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 13<sup>th</sup> day of March, 2019.

Under Section

4 of the Protection of Children

from Sexual offences Act, 2012.

Read With

376(2)(i) of the Indian Penal Code.

State of Assam

-Versus-

1. Sri Rajiv Sabor.

..... Accused Person.

This case was taken up for final hearing on 13.03.2019 in the presence of

Sri Basanta Gogoi...... Advocate for prosecution side.

Mrs Merry Shyam..... Advocate of the accused.

F.I.R was lodged on :::::::::: 01.08.2017.

Charge framed on ::::::::::: 01.12.2018.

Argument Heard on :::::::::: 13.03.2019.

Judgment Delivered on :::::::::: 13.03.2019.

Special Judge Charaideo, Sonari



### JUDGMENT

In this case the accused person is facing trial under section 4 of the P.O.C.S.O act 2012, and alternatively Under Section 376(2)(i) I.P.C

- 1. The case of the prosecution is that, on 30/07/2017 at 1 A.M the accused after entering the house of the informant, raped his minor daughter.
- 2. Later on, a case was registered in this regard, before the Charaipung Police station, bearing its P.S case no 06/17. Police after investigation forwarded chare sheet U/S 4 of the P.O.C.S.O act against the accused person. Thereafter, case was committed and charge U/S 4 POCSO act 2012 read with section 457 I.P.C was framed by my ld. Predecessor. Later on charge was again framed as per section 42 of the POCSO act U/S 4 of POCSO act read with section 376(2) (i) I.P.C. The charge was read over and explained to the accused person, to which he, pleaded not guilty and claimed to be tried. Prosecution examined 9 witnesses.
- 3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

## 4. **Points For Determination in this case are:**

i) Whether the accused on 30/07/2017, at 1 A.M committed penetrative sexual assault on the daughter of the informant Sri Ramesh Mura, who was 13 years old at that time?

#### and alternatively

ii) Whether the accused on 30/07/17, at 1 A.M, committed rape on the minor daughter of the informant, who at that time was 13 years old?





## 5. **DISCUSSION DECISION AND REASONS FOR THE DECISION**

Let us now, discuss evidences on record, concerning the points for determination of this case. In this case the alleged victim was examined as P.W1; the P.W1 in her evidence deposed that, accused is her cousin. That, her date of birth is 05.02.03. That, on 30.07.17 she was at the residence of her sister. On that day the mother in law of her sister was there. That, she was sleeping with Mongli Mura, suddenly she woke up on being touched at her vagina by somebody. Tha, on getting up and switching the light, she saw that accused kept himself hidden under the bed. That, accused fled away, when she called the mother in law of her sister. That, on the next morning she informed the matter to her parents.

In the cross examination this P.W deposed that, she felt touching of her vagina by somebody. That, while sleeping she wears skirt and panty and on getting up she found panty and skirt in place.

I have considered the evidence of the most material witness of this case and found that according to the alleged victim she only felt that somebody touched her vagina but saw the accused hiding under their bed.

6. In this case the other most material witness is the P.W3 i.e. the person who was present at the place of occurrence at the relevant time. The P.W3 in evidence deposed that, Sonia Mura is the sister of her daughter in law. That, 30.07.2017 Sonia came to her residence to stay there, and they slept together on the same bed. That, at 3 A.M Sonia told her that somebody entered their room. That, on getting p she saw Rajiv in their room. That, when asked, Rajiv told that he came, searching for match stick. That, the accused came out from the room and slept on the courtyard. That, she took Sonia to her parents and informed the matter to the mother.

In the cross examination this P.W deposed that, her house is made of bamboos and door gets open on pressing. That, accused came to her house asking for match box.

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I have considered the evidence of the alleged victim and the most material



witness i.e. P.W3 and found that the witness failed to support the victim. The P.W3 neither deposed that accused touched the vagina of the victim nor deposed that alleged victim told her that accused touched the vagina of her (victim). I have considered one aspect that witness (P.W3) was not told about any incident by the victim although they both were sleeping on the same bed, which is very unlikely. Here the most material witness did not support the case of the prosecution.

The informant was examined as P.W2 in this case. The P.W2 in evidence 7. deposed that, Sonia Mura is his daughter. That, at the time of incident she was aged about 14 years. That, on 30/07/17 Sonia went to stay at the residence of his daughter Manju. That, she stayed with the mother in law i.e. Mongli Mura. That, on the next morning his daughter told him that, accused went to her sister's house and slept with her and toughed her. That, he was also told by his daughter that on getting up by her, she saw that accused fled away.

In the cross examination this P.W deposed that, before filing of the F.I.R he met the accused who denied the allegation.

I have considered the evidence of the P.W2 i.e. the informant of this case and found that the informant as witness failed to corroborate the F.I.R he lodged. The informant in the F.I.R mentioned that accused raped her daughter but as witness the informant never mentioned that accused raped his daughter. Further the P.W2 also failed to support the evidence of the alleged victim i.e. his daughter as he never deposed in evidence that, accused touched the vagina of his daughter.

The P.W4 is the mother of the victim. She in evidence deposed that, on 8. 30/07/17 Sonia went to the house of Manju Mura for staying there. That, she stayed with Mongli Mura the daughter in law of her other daughter. That, on the mid night her daughter and Mongli came and told that accused raped her after entering their house. On the next morning Sonia again told that on the previous night accused raped her. That, she informed the matter to her husband.

I have considered the evidence of the P.W4 i.e. mother of the alleged victim Charaideo, Sonaria here also found that this P.W failed to corroborate the evidence of the alleged victim. According to this P.W accused raped her daughter as it was reported by her daughter but the victim i.e. her daughter in evidence never deposed that accused

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raped her.

9. The P.W5 in evidence deposed that, after 2 days of the incident, in the village meeting he came to know from the father of the victim that accused one night entered the house of the brother in law of Sonia when she went there to stay. That, in the meeting when the victim was asked about the matter she told that accused raped her. That, accused admitted that he entered the room but denied that he committed rape on the victim.

Here also the P.W5 failed to support the evidence of the alleged victim.

The P.W6 in evidence deposed that, after 2/3 days of occurrence of the incident when police came to their village, he came to know from the victim that, accused committed rape on her.

As per P.W7 she came to know from villagers that accused committed rape on Sonia. The evidences of P.W5,6 and 7 are not direct evidence but they have been reported about the alleged incident.

10. The medical officer who examined the alleged victim as P.W8 deposed that, on 2.08.17 at 1:20 P.M he examined Miss Sonia Mura. This P.W opined that No evidence of recent sexual assault present. That, she is not found to be pregnant as on 4.08.17. That, her age is above 15 years but below 18 years.

An analysis of the medical evidence will show that it has neither corroborated the evidence of the alleged victim nor clearly indicated anything concerning this particular case.

The investigating officer of this case as P.W9 deposed that, he received the F.I.R of this case and investigated in to the matter. That, he went to the place of occurrence, drew sketch map. That, after completion of investigation he forwarded charge sheet.

Special Judge 11. I have scrutinized evidences of the witnesses of this case and found the Charaideo, Sonari .::

a) The victim never adduced any evidence which may attract any of the points for determination, neither the informant. The cross examination of PW 1



yielded that no penetrative sexual assault on the victim took place. Rather victim felt that someone touched her vagina, she even did not specifically deposed that accused touched her vagina.

- b) The informant failed to support the F.I.R he lodged. The informant never adduced any evidence which specifically corroborated either the evidence of the alleged victim or the case of the prosecution.
- c) The most material witness i.e. P.W3 who was present at the place of occurrence at the time occurrence never deposed anything against the accused. She never supported the evidence of the alleged victim.
- d) Evidences of P.W 4, 5, 6 and 7 failed to support the evidence of the alleged victim.
- e) The medical evidence also failed to specify anything concerning the points for determination.
- 12. Here in this case the accused is facing trial under section 4 of the P.O.C.S.O act and alternately U/S 376 (2)(i) I.P.C, but the discussions made above shows that cross examination of PWs disproved the case of the prosecution. Here the victim herself failed to support the case of the prosecution. Here the alleged victim even failed to support the statement she made under section 164 Cr.P.C. During statement recorded under section 164 Cr.P.C she stated that she was raped by the accused but in evidence (cross examination) as P.W1 she deposed that she only felt that someone touched her vagina. In this case other examined witnesses including the most material i.e. P.W3 also failed to support the evidence of the alleged victim. On the other hand independent witnesses i.e. P.W 4, 5, 6 and P.W7 adduced evidences but those evidences are not supported by the alleged victim.
- 13. I have considered the evidences on record, which includes the evidence of the prosecutrix and I find that, there is no iota of evidence to bring the accused **Special Judge** person within the ambit of either section 376(2)(i) of I.P.C or section 4 of the POCSO **Charaideo**, **Sonart**, 2012 as the accused disproved prosecution case.
  - 14. This being the position of this case, in opinion of this court, prosecution has failed to prove the case against the accused person and accordingly the accused Sri



Rajib Sabor is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision 437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 13<sup>th</sup> day of March 2019.

(S.I.Rahman)

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## **Appendix**

### Prosecution Witnesses.

- Sl. 1---- Prosecution Witness 1 --- Alleged victim,
- SI. 2---- Prosecution Witness 2 --- Sri Ramesh Mura,
- SI. 3---- Prosecution Witness 3 --- Smti. Mongla Mura,
- SI. 4---- Prosecution Witness 4 --- Smti. Sangeeta Mura,
- SI. 5---- Prosecution Witness 5 --- Sri Dilip Garh,
- SI. 6---- Prosecution Witness 6 --- Smti. Jina Sabar,
- SI. 7---- Prosecution Witness 7 --- Smti. Geeta Haro,
- SI. 8---- Prosecution Witness 8 --- Dr. Mintu Deb,
- SI. 9---- Prosecution Witness 9 --- Sri Nandeswar Borgohain.

#### Prosecution Exhibits.

Prosecution Exhibits. 1. Statement u/s 164 CrPC,

Prosecution Exhibits. 1(1) Signature of P.W. 1,

Prosecution Exhibits. 2 FIR,

Prosecution Exhibits. 2(1) Signature of P.W. 2,

Prosecution Exhibits. 3 Medical report,

Prosecution Exhibits. 3(1) Signature of P.W. 8,

Prosecution Exhibits. 4 Sketch map,

Prosecution Exhibits. 4(1) Signature of P.W. 9,

Prosecution Exhibits. 5 Charge sheet,

Prosecution Exhibits 6 Signature of P.W. 9.

#### Defence witness.

Nil.

Defence Exhibit.

Nil

(S.I.Rahman)

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