IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.30 of 2019

(U/S 342/34 IPC and Sec. 4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of Assam	Complainant.
-Versus-	
1. Kala Mia	
2. Anar Uddin	.Accused persons.
Charge framed on:	20/7/19
P.Ws. examined on:	30/9/19
Argument heard on:	30/9/19.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr.A.R. Barbhuiya, Advocate.

Judgment pronounced and delivered on:-.....30/09/19.

JUDGMENT

1. The prosecution case, in brief, is that the informant Md. Surman Ali lodged an FIR with the I/C of Bhangarpar police out post stating the facts that on 29.8.15 at about 5 p.m. the daughter of the informant while was going to her elder sister's house the accused Kala Mia suddenly came and gagged her mouth and kept her confined in the house of brother of the accused namely Moinul

Haque. It is further alleged that accused committed sexual intercourse with the daughter of the informant in the house of said Moinul Haque. It is also alleged that the elderly local persons convened a bichar in this respect but as the accused Anor Uddin remained absent in the said bichar the bichar could not be held.

- 2. On receipt of the FIR, Bhangarpar outpost forwarded the same to Borkhola PS wherein a regular PS case was registered vide Borkhola P.S. Case No.282/15 U/S 342/34 IPC read with Section 4 of POCSO Act. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The victim girl was also sent to SMCH, Silchar for medical examination. The investigating officer visited the place of occurrence and prepared a rough sketch map. He also recorded statement of the witnesses and subsequently after completion of investigation submitted charge sheet against accused persons U/S 342/34 IPC read with Section 4 of POCSO Act.
- 3. The offence U/S 4 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was committed to the Special court . In due course, upon appearance of the accused persons and after hearing both sides formal charge U/S 342/34 IPC and Section 4 of POCSO Act was framed by this court against the accused persons. The charges having been read over and explained the accused persons pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether the accused persons in furtherance of their common intention on 29.08.15 at about 5 p.m. at Sunapur Part I wrongfully confined the victim in the house of elder brother of the accused in order to commit rape, as alleged?
- (2) Whether the accused persons committed penetrative sexual assault upon the victim, as alleged ?
- 5. From the prosecution side as many as 2 witnesses have been examined including the informant and the victim. The defence side has examined none. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.

6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in point for determination.
- 8. PW.1 is the victim i.e. the principal witness in this case and she deposed in her evidence that about 2 and half years ago one day she went to her cousin sister's house situated in the same village at Sonapur without the knowledge of her informant-father. Thereafter, her father, had lodged the FIR. After 2 days, she returned to her house. Police brought her to the PS and thereafter took her to SMCH, Silchar for her medical examination and thereafter took her to Court wherein her statement U/S 164 Cr.P.C. was recorded. Ext. 1 is the said statement wherein Ext. 1(1) & Ext. 1(2) are her signatures. In her cross examination she stated that she gave her statement before Magistrate as per direction of police and she has no grievances against the accused persons.
- 9. PW.2 Surman Ali, another prime witness i.e. the informant of the case has deposed in her deposition that about 2/3 years ago, the occurrence took place and prior to the occurrence, there was talk of marriage with accused Kala Mia in respect of her daughter, the victim but PW.1 had not agreed with the said proposal. Thereafter, his daughter, the victim without his knowledge went to the house of his brother's daughter and being suspected and as per advice of his co-villagers, PW.2 went to the police station and lodged the FIR against the accused persons. In his cross examination PW.2 stated that he does not know the contents of the FIR and he put his thumb impression as per advice of his family members and co-villagers. Later on, he came to know that he lodged the case due to misunderstanding of facts. He has no grievances against the accused persons. At the time of occurrence, the age of her daughter was above 19 years.
- 10. So, from the evidence of prime witness i.e. the victim PW.1 it appears that she did not at all implicate the accused person in the alleged offence of crime. Rather, she stated in her cross examination that she has no grievances against the

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accused. PW.2, the informant also did not implicate the accused in the alleged offence of crime. From his evidence, examination in chief and cross examination, it is cropped up that at the age of 19 his victim daughter went to the house of one of his relations and being suspected he lodged this FIR at the advice of his co villagers by putting thumb impression and he does not have knowledge about the contents of the FIR and later he came to know that he lodged this case out of misunderstanding of facts. So, it appears from the evidence in entirety that neither the victim PW.1 nor the informant PW.2 has implicated the accused in the alleged offence of crime in their evidence.

- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 342/34 of IPC and Sec. 4 of POCSO Act against accused persons -Kala Mia and Anar Uddin.
- 12. In view of the above, accused persons are not held guilty and stand acquitted of the charge leveled against them and they are set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 30th day of September, 2019.

Dictated and corrected by

(Darak Ullah)

Special Judge, Special Judge,

Cachar, Silchar. Transcribed by K. Bhattacharjee,

Stenographer Gr. I

Cachar, Silchar.

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 30 of 2019.

APPENDIX

- (A) <u>PROSECUTION WITNESSES:</u> P.W. 1 Mianara Begum
- P.W. 2 Surman Ali.
- (B) <u>DEFENCE WITNESSES</u>: NIL (C) <u>PROSECUTION EXHIBITS</u>: -
- Ext. 1 statement of victim
- (E) <u>DEFENCE EXHIBITS</u>: NIL. (F) <u>COURT EXHIBITS</u>: - NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.