Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge,

Cachar, Silchar.

Spl(POCSO) Case No. 52 / 2019 u/s 341/354(B)of IPC r/w sec. 4 of the POCSO Act

The State of Assam

-Versus-

Manjurul Islam Mazumder @ Manjur

..... accused person

Dates of evidence : 17.12.19

Date of argument: 17.12.19

Date of judgment : 17.12.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. Y.A.Barbhuiya. Ld. Advocate

J U D G M E N T

- 1. The brief facts of the prosecution case is that the informant Nazma Begum Mazumder had lodged an ejahar dated 21.11.17 stating that on 21.11.17 at about 10 am the accused No.1 called the minor daughter of the informant and wrongfully restrained her with the intention of disrobing or compelling her to be naked and committed rape upon the daughter of the informant and also committed penetrative sexual assault upon her.
- 2. Accordingly, on receipt of the ejehar, police registered a case being Silchar P.S Case No.2882/17 u/s 325 of the IPC r/w sec.4 of the POCSO Act. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 341/354(B) of the IPC r/w sec.4 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court. Thereafter, on 18.9.19 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Manjurul Islam Mazumder has appeared before this court and on 18.11.19 after hearing the prosecution and the defence counsel, this court was pleased to frame charges 341/354(B) of the IPC r/w sec. 4 of the POCSO Act against the accused person and its particular was read over

and explained to him to which the accused pleaded not guilty and stood to face the trial.

- 4. Thereafter, the trial of this case was commenced , during which the prosecution examined the victim and the informant of the case as the P.W.1 and the P.W.2 respectively .The Ld. Spl.P.P has submitted that the prosecution evidence may be closed as the informant and the victim have not supported the case of the prosecution. In view of the evidence of the P.W.1 and the P.W.2 , the statement of the accused person u/s 313 of the Cr.P.C is dispensed with as informant and the victim i.e. the P.W.1 & PW 2 have failed to implicate the accused person with the alleged offence.
- 5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

6. **Point for determination:-**

(i)Whether on 20.11.17 at about 10 am at village, Tupkhana part I under Silchar P.S the accused person wrongfully restrained the victim i.e. the daughter fo the informant, as alleged?

`(ii)Whether on the same date, time and place the accused person assaulted/used criminal force to the victim, the daughter of the informant with the intention of disrobing or compelling her to be naked, as alleged?

(iii)Whether on the same date, time and place the accused person committed rape on the victim and the accused also committed penetrative sexual assault on the victim, as alleged ?

Discussion, Decision and Reasons Thereof:-

- 7. In this case the prosecution side examined only the informant and the victim of the case as the P.W.1 and the P.W.2.
- 8. The P.W.1 is the victim of the case and she stated that the occurrence took place about 3 years ago at about 2.30 PM, when she along with her 3/4 friends went to the river at Tupkhana for taking bath and on her return she heard that the accused entered into altercation with her mother. She added that thereafter, her mother lodged a case before police. She also stated that police took her to SMCH, Silchar wherein her medical examination was done and also brought her to Court where her statement U/S 164 Cr.P.C. was recorded. The said statement is brought on record as the Ext. 1 . She also stated that at the time of occurrence she was a student of class V.

During her cross-examination the P.W.1 stated that the accused is my uncle. She also admitted that the altercation between the accused and her mother took place in respect of land dispute. She also stated that there is common courtyard for all of the houses of our campus including the house of the

accused and there is common path for all of them. She specifically admitted that she does not know as to when her mother lodged the lodged the FIR. She also stated that she gave statement before the Court as told by her villagers and she does not remember as to what she had stated before the Magistrate in her statement U/S 164 Cr.P.C. The P.W.1 further stated in her cross that no any incident took place between her and the accused and that she has no grievances against the accused.

9. The P.W.2 Nazma Begum Mazumder and she stated that she is the informant of the case and she lodged the case against the accused Manjurul Islam Mazumder in the year 2017. She added that the accused entered into altercation with her in respect of land dispute. She also stated that she complained the same to village elders and thereafter to panchayet but they failed to settle the matter and the accused continued to enter into altercation with her regarding the land dispute. She also stated that her house is near the river and on the date of occurrence about 3 years ago, her daughter, the victim came from the river and she heard crying and then on being asked her daughter told her that the accused told her(victim) some unpleasant words and thereafter her villagers advised her to lodge a case and accordingly she lodged a case before Arunachal Outpost under Silchar PS. The ejahar is brought on record as the Ext. 2. The P.W.2 stated that at the time of occurrence, her daughter was studying in class V and at the time of occurrence her daughter was aged 11 years.

During cross-examination the P.W.2 admitted that the land is an ancestral property of her husband and the accused. She stated that after the alleged occurrence she complained to the village elders and thereafter 4/5 days she reported the matter to the panchayet but as no bichar was held at Panchayet and as per advice of the village elders she lodged this case. The P.W.2 admitted that she does not know the contents of the FIR. She also stated that the residential plot of their land is still an ejmali property with the accused. She added that she had not seen the occurrence between the accused and my daughter, the victim and that she had not seen anything. She admitted that she had forgotten as to what had her daughter stated in respect of the incident and that she has no grievances against the accused.

10. Appreciating the materials on record, it is found that though the informant P.W.1 during her deposition before the court has failed to implicate the accused person rather she gave clean chit to the accused by stating that on the date of occurrence at about 2.30 pm when she alongwith her 3-4 friends went to the river at Tupkhana for taking bath and on her return she heard that the accused entered into altercation with her mother whereas in the Ext.1, the informant alleged that the

accused wrongfully restrained her daughter and committed sexual assault upon her. The P.W.2 is the informant of the case and she also failed to implicate the accused person with the alleged offence. She admitted that there is land dispute between the accused and her family. Therefore, the evidence of both the witnesses contradictory and failed to connect the accused person with the alleged offence. Although, the P.W.1 & 2 have stated in their evidence that the victim was a student of class V but the prosecution has failed to prove any offence charged against the accused person .

- 11. In view of the above position, I am of the opinion that the prosecution side failed to prove the offence charged against the accused person i.e. the offence u/s 341/354(B) of the IPC r/w sec.4 of the POCSO Act.
- 12. It is the bounden duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt.
- 13. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

ORDER

14. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s

(8)

341/354(B) of the IPC r/w sec. 4 of the POCSO Act against the

accused person present today beyond reasonable doubt. As a

result, the accused person namely, Manjurul Islam Mazumder @

Manjur is acquitted and set at liberty.

Set my hand and seal of this case on the 17th day of

December, 2019.

(Mr.D.Ullah),

Special Judge, Cachar, Silchar.

Dictated & corrected by me;

Special Judge, Cachar, Silchar.

Contd....p/9

APPENDIX

A.Prosecution Witnesses:-

P.W.1-victim

P.W.2-Nazma Begum Mazumder

B.Prosecution Exhibits:-

Ext.1-statement u/s 164 of the Cr.P.C

Ext.-FIR

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah), Special Judge, Cachar, Silchar.

Transcribed by-S.A.Laskar, Stenographer