IN THE COURT OF THE ADDL. SESSIONS JUDGE, FTC, AT BISWANATH CHARIALI, SONITPUR

Spl. (POCSO) Case No. 5 of 2016 U/S 376 I.P.C. r/w Sec. 4 of POCSO Act

Present:- Mrs. M. Deb

Additional Sessions Judge,

Biswanath Chariali

The State of Assam

-Vs-

Sri RiazuddinAccused.

Advocates appeared:

For the State :- Mr. H. Hazarika, Addl. P.P.

Biswanath Chariali

For the Accused :- Mr. P. Hazarika, Advocate

Biswanath Chariali

Date of Argument :- 19-12-2016.

Date of Judgment :- 19-12-2016.

JUDGMENT

FACTS OF THE CASE:-

- 1. The prosecution case in a nutshell is that on 16-03-2016, the accused person namely Riazuddin committed rape on the minor daughter of the complainant. The complainant lodge the F.I.R. on the above facts, with Gingia Police Station on 17-03-2016.
- 2. On receipt of F.I.R. the police registered the case and investigated

the same and found material against the accused person U/S 376 of the I.P.C. r/w Section 4 of the POCSO Act and submitted charge-sheet against the accused person U/S 376 of the I.P.C. r/w Section 4 of the POCSO Act.

3. On appearance of the accused person, copy was furnished and after hearing the learned counsel from both sides and basing upon the materials on record, charge U/S 376 of the I.P.C. r/w Section 4 of the POCSO Act was framed and particulars of accusation was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION:-

- 4. In the instant case, it is to be determined:-
- a) If on 16-03-2016, the accused person committed rape on the minor daughter of the complainant?
- 5. The prosecution examined only two witnesses and they did not support the case on material aspects and as such examination of the accused U/S 313 Cr. P.C. was dispensed with. Defence side denied to adduce any evidence.
- 6. I have heard the learned counsel of both sides. Perused the evidence on record and came to the following decision.

DECISION AND REASONS THERE OF:-

- 7. The prosecution relied upon oral testimony of only two witnesses. Before proceeding further, I find it necessary to look through the evidence on record.
- 8. PW-1, Md. Azahar Ali (Complainant), during course of his evidence stated that about four months ago, his daughter (victim) fled away with the accused person and thereafter he filed this case. He proved F.I.R. as Ext-1 and his Signature as Ext-1(1). In his cross-examination he

stated that about 2 months ago, his daughter (Victim) was married to the accused person and his daughter is living with the accused person happily and that he has no allegation against the accused person and he has filed this case out of misunderstanding and that he did not want to proceed with the case.

- 9. PW-2, (Victim), during course of her evidence stated that the complainant is her father and the accused person is her husband and that about four months ago, she fled away with the accused person and thereafter her father filed this case. PW-2 further stated that Police recovered her and produced her before the Magistrate and the Magistrate recorded her statement. She proved her statement as Ext-2 and her signature as Ext-2(1) and 2(2). In her cross-examination, she stated that she had love affairs with the accused person and about three months ago, she was married to the accused person and now she is living with accused person happily and that her father filed this case out of misunderstanding.
- 10. Above being the evidence on record, let me see how far such evidence makes out the allegation against the accused person.
- 11. In the instant case, the prosecution has alleged that the accused person took the daughter of the complainant with him and committed rape on her (Victim) but it was negated by the victim (PW-2). In her evidence, she emphatically stated that she went with the accused person on her own volition as she had love affairs with the accused person and now she is married to the accused person and living with him happily and peacefully and that her father has filed this case out of misunderstanding PW-1, the complainant (father of the victim) supported the version of the victim (PW-2) and stated that he has filed this case out of misunderstanding and now his daughter is married to the accused person and living with him happily and peacefully and that he did not want to proceed with the case.

That being the position, I am of the opinion that the prosecution has failed miserably to established the case against the accused person U/S 376 of the I.P.C. r/w Section 4 of the POCSO Act. beyond all reasonable doubt.

CONCLUSION:-

12. In the light of the above discussion, I hold that the accused person is not guilty and thereby he is acquitted of the offence U/S 376 of the I.P.C. r/w Section 4 of the POCSO Act. Set him at liberty forthwith. Bailbond, if any stands cancelled.

Given under my signature and seal of this court on this the 19th day of December' 2016.

(Mrs. M. Deb) Additional Sessions Judge, Biswanath Chariali

Dictated & Corrected by me

(Mrs. M. Deb) Additional Sessions Judge, Biswanath Chariali

Spl. (POCSO) Case No. 5 of 2016

APPENDIX

Prosecution witnesses:-

PW-1 – Md. Azahar Ali (Complainant).

PW-2 – Victim.

Prosecution Exhibits:-

Ext-1 - F.I.R.

Ext-2 – Statement of Victim U/S 164 Cr. P.C.

Defence witness:-

NIL

(Mrs. M. Deb)
Additional Sessions Judge,
Biswanath Chariali
