IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.12/2018

U/S-417/376 IPC R/W Section 4 of the POCSO Act, 2012

State of Assam

-Versus-

Md. Jakir Hussain

s/o-Md. Suksan Ali

resident of vill -Kalahikash

P.S.-Boko

Dist.-Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor

-----for the State

Mr. T. Ahmed, Advocate

-----for the accused

Date of evidence: 12.11.2018, 28.01.2019, 28.03.2019.

Date of Argument: 30.03.2019

Date of Judgment: 30.03.2019

JUDGMENT

- 1. The Prosecution case in brief is that—on 26.07.2016 the complainant Md. Billal Hussain lodged an ejahar alleging that on 09.07.2016 the accused induced his minor daughter aged about 14 years with a false promise of marriage and in that process, he committed rape upon her. Hence, this case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 375/2016 U/S-420/376 IPC r/w Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-420/376 IPC r/w Section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and after hearing both the parties, charges were framed U/S- 420/376 IPC r/w Section 4 of the POCSO Act, 2012 against accused—Md. Jakir Hussain. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as 5 (five) numbers of witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 09.07.2016 at about 10.00 a.m cheated the Complainant's minor daughter and by fraudulently or dishonestly induced her to do certain bad act which she would not do or omit to do, if she were not deceived and which act or commission caused damage or harm to her in her body, mind and reputation and, thereby, committed an offence punishable U/S 417 of IPC?
- (II) Whether the accused person on the same date, time and place committed rape upon the minor daughter of the informant and thereby committed an offence punishable U/S 376 of IPC?

(III)Whether on the same date, time and place the accused committed penetrative sexual assault on the victim girl and thereby committed an offence punishable U/S 4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined as many as 5 (five) numbers of witnesses.
- 7. P.W.1, Haider Ali has deposed in his evidence that he knows both the parties but he did not know the prosecutrix. P.W.1 also did not know about the incident nor heard about it.
- 8. P.W.2, Md. Billal Hussain is the informant of this case. He deposed that he knows the accused. Prosecutrix is his daughter and she was 17 years old at the time of incident. He deposed that the incident took place about 3 years ago at around 8.00 p.m. He was in Dimapur for work at the time of incident. After two days of the occurrence, his mother—Mayurjan Khatun rang and told him that accused and his friends uttered some obscene words to the prosecutrix for which the village people blamed their family. P.W.2 returned home and took the prosecutrix to the police station. Further P.W.2 heard from the village people that the accused had forcibly raped the prosecutrix. Thereafter, P.W.1 lodged the ejahar against the accused person. Thereafter, he took the prosecutrix to Dimapur with him.
- 9. In his cross-examination P.W.2 deposed that he did not know the names of the village persons from whom he heard that accused had forcibly raped his daughter (prosecutrix). P.W.2 disclosed that the ejahar was written by some other person. P.W.2 made it clear that after lodging the ejahar he got to know from his mother that the accused person did not rape the prosecutrix.
- 10. P.W.3, is the Prosecutrix. She has stated in her evidence that informant is her father. She knows the accused person. P.W.3 further deposed that about three years ago at about 8.00 a.m the accused and his friends uttered some obscene words to her for which the village people blamed their family. Thereafter, when her father came to

know about the incident, he lodged the false ejahar against the accused person. P.W.3 made it clear that the accused did not do anything with her and she gave her statement before the police and before the Magistrate as tutored by her father. No incident as alleged in the ejahar had taken place. Thereafter, her father took her to Dimapur.

- 11. P.W.4, Md. Atowar Rahman has stated in his evidence that he knows the informant of this case and the accused. But he does not know the prosecutrix. P.W.4 stated that the incident took place about 1 ½ years ago. On the next day of the occurrence, while he was going to the village market he met two police men going to the house of the accused. They enquired him about the incident and he told them that he does not know about it and nor heard about it. P.W.4 did not tell the police that he heard about the incident
- 12. P.W.5, Md. Apser Ali has stated in his evidence that he knows the Informant as well as accused of this case. Prosecutrix is his related sister. P.W.5 further deposed that he did not know anything about the incident and nor heard about it.
- 13. Now, in this instant case, it is in the evidence of P.W.3 (prosecutrix) that about three years ago at about 8.00 a.m the accused and his friends uttered some obscene words to her for which the village people blamed their family. But, she did not state the exact obscene words uttered at her. P.W.3 made it clear that no incident as alleged in the ejahar and in the statement made before the Magistrate U/S-164 Cr. P.C had taken place with her. P.W.3 disclosed that she gave her statement as tutored by her father. She confirmed that the accused did not do any bad act with her. But, her father (P.W.2) on being informed about the incident, lodged the false ejahar against the accused. Witness, P.W.2 also supported the evidence of P.W.3 and disclosed in his cross examination that he heard from his mother that the accused did not rape the prosecutrix. Therefore, it is well proved that the accused did not do any bad act with the prosecutrix (P.W.3). Hence, the offences U/S-417/376 of IPC R/W Section 4 of the POCSO Act,2012 are not at all attracted in this instant case.
- 14. Considering the above facts , materials and evidences of the Pws , it is concluded that the prosecution has miserably failed to establish the commission of offences u/s 417/376 IPC r/w section 4 of POCSO Act beyond all reasonable doubt against the accused person—Jakir Hussain. Accordingly, the accused is held not guilty and he is

,hereby, acquitted of the offence U/S-417/376 of IPC r/w Section 4 of the POCSO Act, and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.

- 15. The case is disposed of on contest.
- 16. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 30th day of March, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Haider Ali

P.W.2, Md. Billal Hussain

P.W.3, is the Prosecutrix

P.W.4, Md. Atowar Rahman

P.W.5, Md. Apser Ali

Special Judge, Kamrup, Amingaon