**DISTRICT: DHUBRI** 

## IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri T. Kalita,

**Special Judge, Dhubri** 

### Special Case No. 61 OF 2019

U/S 6 of POCSO Act, R/w Section 376 (3) IPC Corresponding to G.R. Case No.4000/2019

State of Assam ....Complainant

Versus

Abdul Karim ...... Accused person

Charge framed on : 04-09-2019

Evidence recorded on : 17-09-2019, 01-10-2019

21-10-2019, 04-11-2019

22-11-2019, 06-01-2020

Statement recorded on : 18-02-2020

Argument heard on : 18-02-2020

Judgment delivered on : 27-02-2020

# Advocates who appeared in this case

Shri U.K. Sarkar, Special P.P. for the Prosecution

Shri J. Talukdar, Advocate for the Defence

### <u>JUDGMENT</u>

1. The story of the prosecution, as unfolded at the trial, may shortly be stated that one Sabnam Ara Begum has filed an FIR with the In-Charge, Bazar T.O.P. Dhubri alleging that one Moriom Begum was interrogated on being suspected about her physical condition by the Member of Farhana Self Help Group and it was revealed that her father has committed rape on her person for which she became pregnant and carrying six months fetus.

- 2. On the basis of the FIR, G.D.E. No. 125 dated 07-08-2019 was made by the Bazar T.O.P. Dhubri and subsequently it was forwarded to the Officer-In-Charge, Dhubri P.S. for registering a case. Accordingly, Dhubri P.S. Case No. 1361/2019 was registered and the police investigated the case and after having completed the same laid charge sheet against the accused namely Abdul Karim to stand trial u/s 376 (3) IPC, R/W section 6 of POCSO Act.
- **3.** Upon appearance of the accused, necessary copies were furnished to him and formal charge u/s 376(3) IPC and Section 6 of POCSO Act were framed against him and explained the text to him to which he pleaded not guilty and claimed for trial.
- **4.** During trial, the prosecution has examined as many as 12 (twelve) witnesses. The examination of the accused was recorded u/s 313 Cr.P.C. and his plea is found total denial. However, he adduced none.
- **5.** I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following point for determination:

Whether the victim was subjected to aggregative penetrative sexual assault by the accused being the victim is a minor girl?

# <u>DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION</u> <u>ARRIVED THEREON WITH REASONS</u>

- **6.** Now let me examine the evidences on record to see how far the prosecution has been able to bring home the charge against the accused on the touchstone of beyond reasonable doubt.
- **7.** PW-1 is the informant Sabnam Ara Begum. According to her, in the month of August 2019, an exchange of hot words took place between the mother of Moriom Begum and her aunt. Accordingly, the Members of Self Help Group came to know that something had happened between the accused and him family. Accordingly, they visited the house of the accused and asked the victim Moriom who told them that her father Karim Sk had sex with her as a result of which she conceived.

Accordingly, she has filed FIR with the In-Charge of Bazar T.O.P. vide Ext-1, Ext-1(1) is her signature. However, she does not have personal knowledge about the occurrence. The Self Help Group is in the name of her daughter Farhana which is registered group. The wife of the accused is Sahida Khatun, but she does not know whether the said Sahida Khatun filed any case against her aunt Hafiza for which there has been a family dispute in between them.

- **8.** PW-2 is one Mofida Khatun. She along with some other women of Farhana Self Help Group visited the house of the accused after coming to know that something had happened in his house. The victim Moriom Begum initially hesitated to speak anything, but subsequently told them that accused Karim Sk had sex with her for which she conceived. Accordingly, the informant filed the case at Bazar T.O.P. Dhubri. But she stated that the informant Sabnam Ara Begum is the wife of her brother-in-law.
- **9.** PW-3 is Hamida Khatun, who is the President of village Bhashanirchar Gaon Panchayat. According to her, the informant Sabnam Ara Begum once visited her house along with several women of village Newghat. They informed her that accused Abdul Karim established physical relationship with his daughter Moriom. Accordingly, she had visited the house of the accused Abdul Karim. But the accused was not present at his house at the relevant time and on being asked victim Mofida told her that she was conceived through her father Abdul Karim. She stated that the mother of the victim also told her that her husband is responsible for the pregnancy of her daughter. However, she stated that there were about 600 women when she visited the house of the accused. However, her statement was not recorded by police. She does not know if there is any enmity in between the families of the accused with that the informant Sabnam Ara Begum.
- **10.** PW-4 is one Hashina Khatun. She stated that one day the mother of Moriom Begum and the aunt of Moriom Begum were involved in an exchange of hot words and then it was disclosed that Moriom Begum conceived through her father Abdul Karim. Accordingly, she along with some other women of the locality visited the house of the accused wherein the victim told them that she conceived through her father. However, she does not know if any enmity exists in between the parties.

- **11.** PW-5 is one Sajeda Khatun. She stated that the fact was disclosed in an exchange of hot words in between the mother of Moriom and aunt of Moriom that Moriom conceived through her father. Accordingly, she visited the house of the accused along with other women of the locality wherein they were told that Moriom conceived through her father. However, she admitted that they suspected the accused and accordingly visited the house of the accused.
- **12.** PW-6 is Moriom Begum, the victim herself. According to her the accused Abdul Karim is her father. Her father has married two wives. There was a family dispute in between her mother with that of her step mother. One day, some women of the locality including the informant came to her house and asked her as to whether her father had sex with her. However, out of fear, she told them as they demanded and thereafter the case was filed. Her statement was recorded by Judicial Magistrate. She was also produced before the Medical Officer. The case was filed against her father which is totally false. Her father did not commit any misbehave with her and he is innocent. However, she proved her statement as Ext-2. She further stated that there were 22 family members in their family.
- **13.** PW-7 Sarjina Khatun stated that the accused is her brother-in-law. The accused did not do anything wrong against her daughter. She further stated that she did not tell anyone that accused committed rape on his daughter. She does not know as to why the case was filed against the accused.
- **14.** PW-8 is one Shohida Khatun, the mother of the victim Moriom Begum. According to her, Moriom is aged about 16 years old. Her husband married with one girl namely Laily. There was a dispute in between herself with that of said co-wife Laily. Accordingly, village women visited their house and they have filed a false case against her husband stating that her husband committed rape on her daughter. Her husband did not misbehave her daughter and she did not conceive and medicine was not administered to terminate her pregnancy. Her husband was innocent.
- **15.** PW-9 is one Saidul Islam who knows nothing about the occurrence.
- **16.** PW-10 is Mamtaz Khatun. According to her, about two and half months back, an exchange of hot words is going on in between the mother of the victim

with that the aunt of the victim and it was revealed that accused impregnated his daughter. Accordingly, some women visited her house wherein Moriom told that her father had sex with her.

- **17.** PW-11 is Ashraful Sk. According to him, the Investigating officer seized one Birth Certificate of the victim Moriom wherein he put his signature as seizure witness vide Ext-3(1).
- 18. PW-12 is the Investigating Officer namely Nilmoni Nath who was working at Bazar T.O.P. at the relevant time. He visited the house of the accused situated at Newghat, prepared the sketch map of the place of occurrence and recorded the statement of the witnesses. The victim was sent to Dhubri Civil Hospital for medical examination wherein she refused to get medically examined. Accordingly he sent up victim to learned Magistrate for recording her statement and also seized the Birth Certificate of the victim. Accordingly, he completed the investigation and submitted charge sheet against the accused to prosecute him u/s 376(3) IPC, Read with section 6 of POCSO Act. He proved the seizure list, sketch map and charge sheet vide ext-3, 4 and 5 respectively. However, he stated that he did not collect any documents of Farhina SHG and he did not seize wearing apparels of the victim.
- 19. Now, these much evidences are found available on record. From the evidence of the witnesses as it appears that there are two sets of witnesses. One set is trying to prove the case and other set tries to save the skin of the accused. The witnesses forming the set are the women of the locality under the name and style of Farhina Self Help Group. The informant Sabnam Ara Begum has filed the case as informed. But she has not stated anywhere that she was authorized to file any case for on behalf of Self Help Group. She has admitted that Self Help Group is in the name of her daughter Farhina. Admittedly she does not have any personal knowledge about the occurrence. The fact of suspicion started from a heated quarrel took place in between the mother of the victim with that of her step mother. The evidence as it appears goes to show that the accused Abdul Karim has got two wives. One is Sahida and another is Laily Bibi, but both of them are not leading a happy life as a result of which quarrel took place in between them. It is stated by the witnesses such as PW-1 to PW-5 that an exchange of hot words took place wherein it reveals that the victim Moriom conceived through her father Abdul Karim.

But nothing is there to show as to what exactly word was revealed in the exchange of hot words. Moreover, the wife of the accused Abdul Karim namely Laily who has taken part in the exchange of hot words was not examined for want of which nothing can be inferred that there has been any occurrence of exchange of hot words took place in between Laily with that of Sahida Khatun. On the other hand, Sahida Khatun stated categorically that her husband is innocent. The evidence of the mother of the victim was getting support from the evidence of the victim herself. She stated categorically that she has not got conceived at any point of time and her father did not misbehave her rather it is fall out of the enmity with her mother with that of her step mother. Moreover, Sahida Bibi, the mother of the victim herself has stated that her daughter has got never conceived and no medicine was administered to terminate her pregnancy. The prosecution has not proved the fact that the victim Moriom aged about 16 years old was getting conceived at any point of time. Admittedly, she has refused to get medically examined, but that does not mean that she was getting conceived through her father. There is in fact no evidence at all that the victim Moriom was conceived. Though it was stated by the informant that they suspected after considering the physical change of the victim Moriom that she conceived. But nothing is there to show what is the changed that took place on her physics for which they came to know that she was conceived. So, from the evidence as it appears that the prosecution is found to have measurably failed to prove the fact that the victim Moriom Begum is getting conceived and as such the question of implicating the accused, her father, is not arising. The entire evidences upon perusal go to show that the case is based purely on surmise and suspicion. It is settled that suspicion howsoever grave, but it cannot take the place of evidence because see of suspicion has got no sore.

- **20.** Having considered all these aspects, I am of the view that the prosecution has failed to prove the charge against the accused person beyond all reasonable doubt. I have got no alternative, but acquit the accused from the purview of charge u/s 6 of POCSO Act, R/W section 376 (3) IPC by setting him at liberty forthwith.
- **21.** The Bail Bond so furnished by the bailor stand cancelled.

**22.** Signed, sealed and delivered in the open Court on this the 28<sup>th</sup> day of February, 2020, at Dhubri.

(T. Kalita) Special Judge, Dhubri

Dictated & corrected by me.

(T. Kalita) Special judge, Dhubri

### **APPENDIX**

#### 1. PROSECUTION WITNESSES:

- PW-1 Sabnam Ara Begum (Complainant)
- PW-2 Mofida Khatun
- PW-3 Hamida Khatun
- PW-4 Hashina Khatun
- PW-5 Sajeda Khatun
- PW-6 X (victim)
- PW-7 Sarjina Khatun
- PW-8 Shohida Khatun
- PW-9 Saidul Islam
- PW-10 Mamtaz Khatun
- PW-11 Ashraful Sk
- PW-12 Nilmoni Nath (Investigating Officer)

## 2. PROSECUTION EXHIBIT:

- Exhibit-1 Ejahar
- Exhibit-2 Statement of the victim recorded u/s 164 Cr.P.C
- Exhibit-3 Seizure list
- Exhibit-4 Sketch map
- Exhibit-5 Charge sheet
- Exhibit-6 Radiological report

(T. Kalita) Special Judge, Dhubri