IN THE COURT OF THE SPECIAL JUDGE::::::GOLAGHAT

SPECIAL(POCSO) CASE NO.28/2014

U/S 448/376 of IPC R/W Sec. 4 of POCSO Act (Arising out of Barpathar PS Case No.81/14)

State

-vs-

Sri Nalia Bhuyan

.....Accused.

<u>Present</u>: Sri K. Hazarika,AJS Special Judge, Golaghat.

Advocates :-

For the State : Mr. P. Bora, Special P.P.

For the accused : Mr. J. Bhuyan.

Evidence recorded on : 29.04.19, 13.05.19

Argument heard on : 13.05.19 Judgment delivered on : 13.05.19

JUDGMENT

1. The encapsulated version of the prosecution case is that on 09.06.14, one Bhim Tossa lodged an ejahar in Barpathar PS stating inter-alia that on 07.06.14, at about 4 PM, when they were away from the house, the accused entered into his house and committed rape forcefully upon his daughter (victim), aged 13

years old showing 'Kalam Katari' and when his daughter (victim) screamed, the accused fled away.

- 2. On receipt of the ejahar, police registered a case being Barpathar PS Case No. 81/14 U/S 448/376 of IPC read with Section 4 of POCSO Act and entrusted SI Bidyut Bikash Boruah to investigate the case. After completion of investigation, police submitted charge-sheet against the accused person U/S 448/376 of IPC read with Section 4 of POCSO Act, 2012.
- 3. When accused Nalia Bhuyan appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 448/376 of IPC read with Section 4 of POCSO Act was framed against the accused person which was read over and explained to him to which he pleaded not guilty and claimed to be tried. Thereafter, the trial commenced.

POINTS FOR DERMINATION:

- 4. (i) Whether the accused person on 07.06.14, at about 4 PM at Kacharihula gaon (Tengani) under Barpathar PS committed house trespass by illegally entering into the house of Sri Bhim Tossa with intent to commit an offence and thereby committed an offence punishable u/s 448 of IPC?
- (ii) Whether the accused person on the aforesaid day, time and place committed rape upon the victim, i.e., the daughter of the informant and thereby committed an offence punishable u/s 376 of IPC?
- (iii) Whether the accused person, on the aforesaid day, time and place committed penetrative sexual assault on the 13

years old daughter(victim) of the informant and thereby committed an offence punishable u/s 4 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

5. To bring home the charge against the accused person, the prosecution examined the following witnesses in the case:-

(i) Sri Bhim Tossa (informant) - PW1

(ii) Sri Hiralal Bakti - PW2

(iii) Smti. Phuleswari Gowala - PW3

(iv) Sri Sanjib Bakti - PW4

(v) Sri Bijoy Urang - PW5

- 6. The defence plea is of total denial. The defence did not adduce any evidence in the case. The accused person was not examined u/s 313 CrPC as there was no incriminating evidence against him.
- 7. I have heard the arguments advanced by the learned counsels for both the sides.
- 8. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.
- 9. PW1(informant) stated in his examination-in-chief that on 07.06.14, at about 4 PM, when he returned home from his work, his daughter, i.e., victim, aged about 13 years, told him that accused Nalia Bhuyan had come to their house at about 3-30 PM and asked for water which she did not provide and so, an alteration took place

between them and that out of misunderstanding, he lodged an ejahar against the accused in Barpathar PS. During cross examination, PW1 stated that his daughter(victim) had expired three months back in her matrimonial house who had eloped with one Madan Kachari of Jamuguri in the year 2014 after the occurrence and that except altercation, no other occurrence had taken place between the victim and the accused person.

- 10. PW2, PW3, PW4 and PW5 stated in their examination-in-chief that they did not know anything about the occurrence.
- 11. From the aforesaid evidence on record, it transpires that the informant and other witnesses did not implicate the accused person with the alleged occurrence. PW1 only testified about an altercation that took place between his daughter(victim) and the accused person as she declined to provide him water which the accused demanded by coming to their house and nothing else. The victim was not examined by the prosecution in the case as she had expired as per the evidence of her father(PW1). Besides that, the other independent witnesses of the case, namely, PW2, PW3, PW4 and PW5 expressed their ignorance about the alleged occurrence. Thus, the witnesses did not support the contents of the ejahar and the prosecution story.
- 12. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge u/s 448/376 of IPC read with section 4 of POCSO Act against the

accused person. As such, accused Nalia Bhuyan is acquitted and set at liberty forthwith.

- 13. Return the seized certificate to the informant in accordance with law.
- 14. Given under my hand and seal of this Court on this 13th day of May, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

Prosecution witness:	
PW1 - Bhim Tossa(informant)	
PW2 – Hiralal Bakti	
PW3 – Phuleswari Gowala	
PW4 – Sanjib Bakti	
PW5 – Bijoy Urang	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Ext.1 - Ejahar	
Material Exhibited by Prosecution:	
Nil.	
<u>Defence Exhibit</u> :	
Nil.	
	(K. Hazarika)
	Special Judge,
	Golaghat.