IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora, Special Judge, Udalguri, Assam.

Special (POCSO) Case No. 6/16. U/S 6 of the POCSO Act.

State of Assam......Complainant.

Vs

Jakir Hussain...... Accused.

Appearance:-

For the Prosecution : Mr. P.Baskey, Public

Prosecutor.

For the defence : Mr. D. Boro, Advocate.

Date of argument : 28.3.2017. Date of Judgment : 28.3.2017.

<u>JUDGMENT</u>

The case of the prosecution, in brief, is that on 23.11.15 informant was informed by her daughter that four months ago accused Jakir Hussain committed rape on her and threatened her not to divulge to others, otherwise she will be killed. Now, informant's said daughter is four months pregnant. Hence this case. On receipt the ejahar kalaigaon PS Case No.226/15 u/s 376 IPC R/W Section 4/8 of POCSO Act was registered. Police held usual investigation. At the conclusion of investigation police laid charge-sheet against accused for the offence punishable u/s 376 IPC R/W Section 6 of the POCSO Act.

2. This court furnished copy of the necessary papers to the accused person. Upon perusal of materials on record and hearing submission advanced by the parties this court found a prima-facie case to frame charge against the accused for the offence punishable u/s 6 of the POCSO Act and charge was framed accordingly. Charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

- 3. In order to bring home the guilt of the accused person prosecution examined as many as five witnesses. Accused is examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused put before him for his explanation where he denied the evidence and allegation and declined to give defence evidence.
- 4. I have heard argument advanced by the learned counsel of the parties and carefully gone through the evidence and other materials on record.

5. **POINTS FOR DETERMINATION**:

Whether the accused on or about 4 months prior to the lodging of this FIR committed aggravated sexual assault upon Miss Manowara Begum, aged about 13 years?

DECISION AND REASONS THEREOF:

6. Prosecution examined the victim as PW5. She stated that she knows the accused Jakir Hussian. He hails from her village. The occurrence took place about 2 years ago. Gajiur Rahaman, her present husband, did sexual intercourse with her as a result of which she became pregnant. Due to misunderstanding she informed her parents that accused Jakir Hussain committed rape on her. In fact the accused did not commit rape on her. Her mother lodged ejahar against the accused. She was produced before the court. She made her statement before the Magistrate. Ext.1 is her statement. Ext.1(1) is her signature. She got married with Gaji.

In cross-examination this witness stated that she had love affairs with Gaji who has married her. She does not want to proceed with the case against the accused. She has no objection if the accused is acquitted from this case.

7. PW.1, Dr. Bhadra Kanta Sarma, who examined the victim girl, deposed that on 26.11.15, he was serving as M. & H.O.1 at Udalguri Civil Hospital. On that day, he examined Miss Manowara Begum, D/o- Md. Asmat Ali of village No.2 Kalaigaon, under Kalaigaon P.S. on police requisition in reference to Kalaigaon P.S. case No.226/15 U/S 376 IPC R/W Sec. 4/8 of POCSO Act. The girl was escorted by UBC-439 Nilima Begum. On examination, he found the following:-

Identification Mark:- (1) one black mole on upper lip (right side) (2) one black mole on right forearm.

Physical examination:-

Height- 157 cm, weight- 45 Kg, teeth- 28 Nos., axillary hair- present, pubic hair- present, breast- developed, hymen- torn, vaginal injury-not seen, clothing- normal.

RADIOLOGICAL EXAMINATION:-

X-ray examination of the right wrist, elbow and iliac crest vide plate No.RXIC-3426 dated 27.11.15 reported by Radiologist Radhika X-Ray, Mangaldai shows radiological age 16 to 17 years.

Urine for pregnancy test on 28.11.15 reported by Rashmi Clinical Lab, Mangaldai shows positive .

Ultrasonography of abdomen on 27.11.15 by Sinologist, Radhika X-Ray and Imaging Centre, Mangaldai reported as single live fetus of 35 +- weeks of gestation size.

The doctor opined that no sign of recent physical injury. Hymen present but torn. Uterus at 35 +- weeks of gestation size. Ext.1 is his report and Ext.1(1) is his signature.

8. PW2, Musstt. Alesha Begum deposed that she know accused Jakir Hussian. She is the informant of this case and mother of victim Manuara Begum. Victim is now aged about 13 years. Her husband is a fisher man. She is a day labourer. They both go out in the morning and return back home in the evening in connection with our livelihood. On the day of occurrence while her daughter Manuara

Begum was alone at home accused Jakir Hussain came to their house and had sexual intercourse with her by force without her consent. He threatened her daughter with dire consequences. In such a manner accused had sexual intercourse with Manuara Begum for 8-10 days by force taking advantage of their absence at home and while Manuara was alone at home. Accused used to visit their house in those days at about 5 to 6pm and had sexual intercourse with her daughter Manuara Begum by force. Victim Manuara Begum disclosed about the entire incident before her while she became pregnant. Thereafter, 'Bichar' was held at the village and in that "Bichar' accused as well as victim were present along with the other persons. The matter could not be resolved at the 'Bichar' with the refusal of the accused to obey the decision of the 'Bichar'. In the 'Bichar' victim disclosed before the village people that it was none but the accused impregnated her by force. Thereafter, she lodged a written FIR in Kalaigaon police station narrating the incident in detail and she put her thumb impression in the FIR. Victim Manuara Begum delivered a female baby. The baby is now aged about 8 months. Victim Manuara Begum told her that she did not disclose the matter immediately after the occurrence as because accused asked her not to disclose the matter to anybody else otherwise he would kill her as well as other family members.

In her cross-examination she stated that at the time of lodging the FIR, she along with her husband and victim daughter went to the police station. She got the ejahar written by one Gouri Das. After lodging of the FIR she took her daughter (victim) to the doctor and after examining the victim doctor told them that victim was carrying pregnancy of 8 months. She did not enquire her daughter Manuara about her menstrual period. She has four daughters and no son. Two of her daughters were already given in marriage. After giving their marriage their family consisted of four members. When both husband-wife went out for work in connection with their livelihood victim Manuara and her younger sister Majida stay at home. Majida is now studying in class VI. She does work as a domestic help as well as casual labourer for cutting earth. Her daughter Manuara is now aged about 13 years. She cannot remember now her date of birth. It is

mentioned in the FIR that the 'Bichar' was held in respect of the incident. She has no knowledge as to who visits their house in their absence while they go for work.

9. PW3, Md. Asmat Ali deposed that he knows accused Jakir Hussian. Victim Manuara Begum is his daughter. She is now aged about 13 years. Himself and his wife usually come out from their house in the morning in connection with their livelihood and return back in the evening at about 6/7 pm. The accused person came to their house in the evening and had sexual intercourse with his daughter Manuara Begum by force. She did not disclose the matter to them out of fear because the accused threatened her with dire consequences. The accused person visited their house for 8/10 days while they were absent at home and had sexual intercourse with his daughter Manuara by force without her consent. Manuara disclosed about the incident to her mother (PW2). PW2 informed him about the occurrence. At the time when Manuara disclosed about the incident to her mother she was carrying pregnancy of 6 months. He called a 'Mel' at his house regarding the crime committed by the accused. In the 'Mel' accused and his family members were present. His victim daughter was also present. She alongwith his wife were also present in the 'Mel'. Some of the Villagers were also present in the 'Mel' including Gaonburah. In the 'Mel' Manuara pointed accused to have had sexual intercourse with her by force. But the accused and his family members refused to have committed the alleged crime. Thereafter, his wife lodged the FIR. Accused proposed the victim girl to marry him. Manuara got pregnancy through the accused. She delivered a female baby. The baby is now aged 8 months. Appearance of the baby resembles to that of accused.

In cross-examination this witness stated that on being enquired Manuara told him that accused had sexual intercourse with her by force. Police send Manuara Begum for medical examination after the lodging of the FIR. Police recorded his statement. His wife disclosed him about the occurrence. In the 'Mel' a written document was prepared regarding the matter. That document was not seized by police. He cannot remember the date of birth of Manuara now.

- 10. PW4, Musstt. Babi Begum deposed that she knows accused Jakir Hussian. He hails from their village. She knows the informant and victim. Before one year ago the accused was arrested. Thereafter police came to their village. Police asked her. She knows nothing about the incident.
- 11. I have given my close scrutiny on the entire evidence on record.
- 12. In this case evidence of victim is of great importance. So, let me first come to deal with the evidence of victim who is examined as PW5.
- 13. According to victim her present husband Gajiur Rahman did sexual intercourse with her as a result of which she became pregnant. Accused Jakir Hussain did not commit rape on her.
- 14. In cross-examination victim has clearly stated she had love affairs with Gajiur who had married her after.
- 15. What transpires from evidence of victim that she has not implicated the accused with the alleged commission of offence. She has not uttered a single word against the accused.
- 16. Pw2, the mother of the victim and PW3, the father of the victim though deposed that accused had sexual intercourse with her daughter but their evidence is not supported by the victim. PW4 has also not deposed in support of prosecution.
- 17. In view of the foregoing discussion, I find and hold that the prosecution has miserably failed to prove its case against the accused person and hence accused is liable to be acquitted.
- 18. In the result, accused is acquitted of the charge and set him at liberty.

Given under my hand and the seal of this court on this the 28^{th} day of March /2018.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge, Udalguri.