IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

Special (POCSO) Case No.-16/2019 U/S-4 of the POCSO Act.

State

- Versus -

Forman Ali @ Harmon Ali

: Accused person.

Present:

Shri P.P. Bairagi, AJS Special Judge, Nagaon.

Appearance & particulars :-

For the State : Mr. M.J. Neog, Ld. Special Public Prosecutor.

For the accused person : Mr. S.N. Talukdar, Ld. Advocate.

Charge framed on : 21/08/2019.

Evidence recorded on : 14/02/2020, 24/02/2020.

Date of recording 313 Cr.P.C. statement: 25/02/2020.

Date of Argument : 25/02/2020.

Date of Judgment : 28/02/2020.

JUDGMENT

- 1. The case of the prosecution in brief is that the informant who is the victim of this case filed First Information Report before the In-Charge of Sibasthan Patrol Post under Samaguri Police Station on 14/04/2018 stating inter alia that on 10/04/2018 at about 8 p.m. when she was coming to her house from the house of her uncle, then accused Harmon Ali forcefully took away her near a jungle by gagging her mouth and by showing a dagger. Thereafter, he committed rape on her in the jungle. On hearing her hue and cry, her father came there and the accused ran away.
- 2. On receipt of the said First Information Report, Sibasthan P.P. GDE No.-212, dated-14/04/2018 was made and forwarded to the Officer-in-Charge of Samaguri Police Station for registering a case. Accordingly, Samaguri Police Station Case No.-216/2018 was registered u/s-4 of the POCSO Act. After investigation, Charge Sheet was submitted against accused Harmon Ali u/s-4 of the POCSO Act showing him as absconder.
- 3. On being produced the accused before this court, copy was furnished to him and he was charged u/s-4 of the POCSO Act by my learned Predecessor in office. The accused person pleaded not guilty when the charge was read over and explained to him.
- 4. During the trial, the prosecution has examined 2(two) witnesses including the victim of the case and closed the evidence. This court also examined one witness as court witness. The accused

person was examined u/s-313 Cr.P.C. who claimed innocence and adduced no evidence.

5. I have heard learned counsels for both the sides and perused the record.

6. Now the point for determination is as follows:-

Whether on 10/04/2018 at about 8 p.m. at Village-Kholihamari under Samaguri Police Station the accused committed penetrative sexual assault upon the minor victim 'X' (14 years) as alleged?

7. DISCUSSION. DECISIONS AND REASONS THEREOF

Now let me see the evidence on record.

8. The victim is examined as PW-1 who has deposed that she had love affairs with the accused person and she invited the accused person to her uncle's house. Accordingly, they met at about 8 p.m. on the day of incident. Her father saw it and became angry. The accused ran away. She filed the First Information Report which is marked as Ext.-1 and Ext.-1(1) is her signature. She also gave her statement u/s-164 Cr.P.C. Ext.-2 is the statement recorded u/s-164 Cr.P.C. and Ext.-2(1), Ext.-2(2) and Ext.-3(3) are her signatures.

During her cross-examination, she has deposed that the accused had not committed any offence with her. Only they talked with each other and her father instructed her to say during investigation and she gave her statement before the police.

- 9. PW-2 is the mother of the victim who has deposed that on the day of incident she was in her house. The accused talked with her daughter i.e. the victim and the father of the victim became angry and filed the case. Ext.-3 is the Birth Certificate of the victim.
- 10. CW-1 is the father of the victim who has deposed that he was not happy about the fact that the accused came to his house. He asked the accused not to come to his house. On the day of incident, the victim was not found. As such, he called the victim loudly. Then, one person ran away. On being asked, the victim reported that it was the accused. This witness has further deposed that his eyesight is poor and unable to see properly.
- 11. From the evidence of the victim, it is noticed that she nowhere implicated the accused person with the alleged offence. She only deposed that as she had love affairs with the accused, as such both of them talked with each other at the house of her uncle; but her father was unhappy and became angry leading to filing of this case. The victim has nowhere implicated that the accused had committed penetrative sexual assault with her. That apart, the mother and the father of the victim have also not deposed that the accused has committed any penetrative sexual assault upon the victim.
- 12. Having considered the insufficient materials on record, I am of the view that the prosecution has failed to establish its case beyond all reasonable doubt. Though the accused did not lead defence evidence, but from the cross-examination itself the burden of proof is rebutted. Accordingly, the accused is acquitted and set at liberty.

- 13. The accused is directed to furnish personal bond of Rs.10,000/- (Rupees ten thousand) with condition that he shall appear before any appellate court or revisional court if same is preferred by the opposite party. Remand him to the judicial custody until acceptance of personal recognition bond.
- 14. This Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this court on this 28th day of February, 2020 at Nagaon.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

APPENDIX :-

Oral evidence :-

PW-1 Victim 'X' (name withheld).

PW-2 Mother of the victim (name withheld).

CW-1 Father of the victim (name withheld).

Documentary evidence :-

Ext.-1 F.I.R.

Ext.-2 Statement of the victim recorded by Magistrate u/s-164 Cr.P.C.

Defence side did not adduce any evidence.

Special Judge, Nagaon.