IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR **SPECIAL POCSO CASE NO. 90 of 2018**

Under section 4 of POCSO Act. (Arising out of G. R Case No. 4313 of 2018)

State of Assam

-Vs-

Md. Javed Mansuri @ Jabed Ali ...

Accused Person

Present: Smti I. Barman, AJS

> Special Judge, Sonitpur, Tezpur.

For the State

UDICIAR Mr. M.C. Baruah, Public

Prosecutor.

For the accused

I. Ansari, Advocate

Date of Argument

23-09-2019.

Date of Judgmen

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23-09-2019.

JUDGMENT

On receipt of the verbal information from PW1 the victim's 1. mother that on 29-10-18 at around 6 P.M., while her daughter aged about 13 years was returning from shop, on her way accused Javed Mansuri gagging her mouth had taken her to a godown and raped her, O/C of Dhekiajuli PS made the GDE No. 827 dated 30.10.18 and registered a case being Dhekiajuli PS Case No. 830/18 u/s 376/109 of the IPC read with section 4/6 of POCSO Act and

endrosed SI Cheniram Gogoi to investigate the case. During investigation, the Investigating Officer (PW 5) recorded the statement of the informant at the police station, visited the place of occurrence, prepared the sketch map, recorded the statement of the witnesses, sent the victim for medical examination, got recorded the statement of the victim u/s 164 Cr.PC and submitted chargesheet against the accused Javed Mansuri u/s 4/6 of POCSO Act.

- **3.** On appearance of the accused person before this Court, furnishing necessary copies as required u/s 207 of Cr.P.C. and after hearing both parties, charge was framed u/s 4 of POCSO Act against the accused Md. Javed Mansuri @ Jabed Ali and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried.
- **4.** To substantiate the case, prosecution examined six numbers of witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations leveled against him and declined to adduce evidence.
- **5.** I have heard the argument of learned counsel of both sides and also have gone through the materials on record.
- The point for decision in this case is that -
 - (1) Whether the accused Md. Javed Mansuri @ Jabed Ali on 29-10-2018 at around 7 p.m. at Medhi Chuburi under Dhekiajuli Police Station committed penetrative sexual assault on the minor girl Miss "X", and thereby committed an offence punishable under section 4 of POCSO Act.

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Discussions, Decisions and reasons thereof:

- 7. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.
- 8. PW 1 the informant as well as mother of the victim deposed that on the day of the incident at about 6 PM, when her daughter was returning from a shop, the accused proposed to love her. At that time seeing her daughter talking with the accused, the villagers raised hulla. Hearing hulla when she rushed to the place of occurrence had found her daughter talking with the accused. Then on being asked by villagers, she informed police. During cross, she stated that she knew that no any bad act was committed to her daughter but finding her daughter talking with the accused, she got angry and as asked by the villagers informed the police.
- **9. PW2** the victim 'Miss X' in her evidence stated that on the day of the incident after the accused proposed her, while she started talking with him, her mother reached there. She informed her mother regarding proposal of the accused. At that time many persons gathered there and then being angry her mother informed police. During cross she stated that when she reported that accused proposed to love her, villagers asked her mother to file a case alleging rape and as tutored by villagers she she gave false statement before the Magistrate. She proved her statement u/s 164 Cr.PC as **Ext.1**.
- **10. PW3** the victim's father stated that his wife reported him that when his daughter was returning from shop, the accused committed bad act on his daughter. But lateron he came to know that the allegation was fasle, actually seeing his daughter talking with the accused, the villagers raised hulla and then his wife being angry informed the police.

- **11. PW4** Dr. Sikha Das, the medical officer in her evidence stated that on 01-11-18, in reference to Dhekiajuli PS Case No. 830/18 u/s 376/109 of IPC read with section 4/6 of POCSO Act, she examined the victim 'Miss X' who gave history of sexual assault by acccused Javed Mansuri on 29-10-18 and found minor abrasion on lower lip and mild tenderness on left upper arm. As per radiological examination, age of the victim is above 16 years and below 18 years.
- 12. The evidence of the **PW5**, the investigating officer Cheniram Gogoi is formal in nature. He visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.PC and submitted chargesheet against the accused Javed Mansuri u/s 4/6 of POCSO Act. During cross he stated that regarding the incident no written FIR was lodged and investigation was done on the basis of the GD Entry made on receipt of verbal information.
- **13. PW6** Mahendra Mohan Patowary the then O/C of Dhekiajuli PS on receipt of verbal information from PW1 that on 29-10-18 at around 6 p.m, while her victim daughter was returning from shop, on her way accused Javed Mansuri gagging her mouth had taken her to a godown and raped her, he made the GDE no. 827 dated 30.10.18 and on the basis of said verbal information registered the case being Dhekiajuli PS Case No. 830/18 u/s 376/109 IPC read with section 4/6 of POCSO Act.
- **14.** In the case the victim and her parents claimed her age as 14 years and the medical evidence reveals that the victim was above 16 years and below 18 years of age. Age of the victim is not in dispute in the case. In the above evidence, I unhesitatingly held that in any case the victim girl is minor below the age of 18 years and is a child as defined u/s 2 (d) of POCSO Act.

15. Now, let us see whether the accused committed any offence. On careful perusal of the record it reveals that on receipt of the verbal information from the victim's mother (PW1), the case was registered and no formal FIR was lodged. Though as per the verbal information of the victim's mother, on the day of the incident when the victim was returning from a shop, accused Javed Mansuri gagging her mouth, had taken her to a godown situated in the premises of Allaudin and forcefully committed her rape, but in her deposition she did not make any such statement. Rather she deposed that on the day of the incident when her daughter was returning from a shop, on the way accused proposed her but seeing them talking, the villagers raised hulla and then she being angry, as asked by the villagers informed police. Undoubtedly in the instant case PW2 the victim is the star witness. She close as the heels of her mother's evidence, categorically stated that on the day, when she was returning home from shop accused Javed Mansuri proposed her love and was talking with her and then seeing them talking, her mother got angry and informed the police. She admitted that when she reported that the accused proposed her , the villagers asked her mother to file a case alleging rape against the accused and on being tutored by the villagers, she also gave statement before the Magistrate. PW3 the victim's father though stated that accused Javed Mansuri committed bad act on his daughter, but at the same time also admitted that lateron from his wife heard that finding their victim daughter talking with the accused, the villagers raised hulla and then his wife being angry informed police.

16. In a POCSO case, the evidence of the victim is the most vital. The evidence of the victim clearly reveals that the accused proposed her love and seeing her talking with the accused on the road, the villagers raised hulla and then her mother (PW1) being

angry informeded the police. The version of the victim and other PWs well established that on the day of incident, the accused proposed her and finding the victim talking with the accused, the villagers advised the mother of the victim to file a false case against the accused alleging rape. Though as per medical report, the victim sustained some minor abrasion on the lower lip and mild tenderness of left upper arm but, the victim during deposition did not state that the accused caused her hurt in any way. Though in statement u/s 164 Cr.PC (Ext.1) the victim alleged rape but in evidence she clearly stated she deposed before the Magsitrate as tutored by the villagers. Law is well settled that statement u/s 164 Cr.PC is not a substantive piece of evidence and as such in absence of evidence, the statement of the victim u/s 164 Cr.PC can not be considered. In the case at hand, the victim did not mention at any point that the accused put any physical or mental force upon her or did any physial contact with her. The evidence of victim's mother clearly indicates that the case was lodged against the accused solely on the instigation of the villagers. Hence, from the facts, circumstances and evidence of the Pws we come to a culminative point that the accused Javed Mansuri @ Jabed Ali had not committed any offence as alleged against him. Rather it can be said that he became a scapegoat as a result of expediency based on false implication and he can not be held guilty for alleged offence of penetrative sexual assault or any other provision of law.

- **17.** From all the above facts and circumstances of the case discussed above, I held and decide that the prosecution failed to prove it's case beyond all reasonable doubt.
- **18.** Accordingly, accused Md. Javed Mansuri @ Jabed Ali is acquitted from the charge u/s 4 of POCSO Act and set him at liberty forthwith. His bail bond shall remain in force till next six months.

19. Given under my Hand and Seal of this Court on this the 23rd day of September, 2019.

(I.Barman)

Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

SONITPUR DISTRICT JUDICIARY

APPENDIX

Prosecution Witness

1. Prosecution Witness :- Mother of the victim

No.1

2. Prosecution Witness :- The victim

No.2

3. Prosecution Witness : Father of the victim

No.3

4. Prosecution Witness :- Dr. Sikha Das, the Medical Officer.

No.4

5. Prosecution Witness :- Cheniram Gogoi, the investigating

No.5 officer.

6. Prosecution Witness :- Mahendra Mohan Patowary. I.O.

No.6

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EXHIBITS.

Exhibit 1 : 164 Cr.P.C. statement of the victim.

Exhibit 3 : Medical report..

Exhibit 4 : Sketch map

Exhibit 5 : Chargesheet

Exhibit 6 : GDE No. 827 dated 30-10-18.

(I.Barman)
SPECIAL JUDGE,
SONITPUR: TEZPUR