IN THE COURT OF SESSIONS JUDGE , DARRANG, MANGALDAI.

Spl(CCL) case No.8 of 2018

(U/S :376/496 of I.P.C. read with Section 8 of POCSO Act).

State
-Versus-**Kabir Ali,**S/O Md. Chand Miya
Village- Jogipara
P.S.-Dhula
Dist-Darrang(Assam)

--Accused.

PRESENT: Sri P.K. Bora, A.J.S., Sessions Judge. Darrang, Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma.

 $\mathsf{A}\;\mathsf{N}\;\mathsf{D}$

Learned advocate for the accused :Mr. Ram Ch. Singh

Evidence recorded on : 19/06/19 & 22/07/19,

Argument heard on : 30/08/2019

Judgment delivered on : 30/08/2019.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 09/09/2017 one Md. Kafiluddin lodged an FIR before the O/C, Dhula Police Station stating that the accused Kabir Ali had contacted physical relationship with his daughter Miss X promising marriage to her and thus, his daughter became pregnant and the accused Akbar Ali and Abdul Nur dragged the matter in the name of solving the issue in a compromise. Therefore, lodging of the FIR was delayed.
- 2. Having received the FIR, Police registered a case. In the course of investigation, Police got the victim medically examined and also got the statement of the victim recorded. Finally, Police submitted charge sheet against the accused U/S 376/496 I.P.C. read with Section 8 of POCSO Act.
- 3. On his appearance before this Court, the written charge U/S 376/496 I.P.C. read with Section 8 of POCSO Act explained and read over to the accused to which he pleaded not guilty.

4. Points for determination:

(i)Whether on 09/05/2017 the accused committed sexual intercourse with Miss X and thereby she became pregnant and thus committed an offence U/S 376 I.P.C. read with Section 8 of POCSO Act?

(ii)Whether on the same date, and time the accused fraudulently and dishonestly made Miss X believed that the accused was his husband and thus committed an offence U/S 496 I.P.C.?

REASON AND DECISIONS THEREON:

- 5. In the course of trial, the prosecution examined Miss X as PW1 and his father Kafiluddin as PW2. PW3 Sabjan Begum, mother of the victim, PW4 Abdul Aziz.
- 6. The evidence of PW1 (victim) Miss X is that on the day of the incident while she was returning after appearing Matriculation examination persons namely

Akbar, Chand Miya, Nijan, Islamuddin, Fakrul, Nur and Kabir Ali followed her and the accused Kabir Ali led her to the house of his Bar Baba(father's elder brother). It was told to her that she would be married by Kabir Ali. Later she gave birth to a male child and Kabir Ali is the father of that child. She specifically stated that there was no marriage between Kabir and her. It has also come in his evidence that there is also a case for maintenance filed by her against Kabir Ali and she filed the case again about 4 months after the incident.

- 7. PW2 Kafiluddin has stated that one day it was discovered by the villagers of his village that his daughter Miss X was carrying pregnancy. When Miss X was asked about it, she told that she was impregnated by Kabir Ali. In a village sitting Kabir also confessed his guilt. Thereafter, he went to Karnataka to earn his livelihood and she filed a case. Thereafter, Kabir Ali returned. A village sitting was held and agreement was prepared. Following the said agreement Kabir kept Miss X for two months, but during that period she was physically assaulted demanding Rs.500000/-(Five lakh).
- 8. PW3 in his evidence states that Miss X and Kabir fell in love with each other. Miss X became pregnant by Kabir. Later he learnt that marriage was held between Miss X and Kabir and demanding dowry Kabir had driven out his wife Miss X.
- 9. PW4 Abdul Aziz in his evidence states that there was a love affair between Kabir and Miss X and Miss X got impregnated by the accused Kabir before her marriage.
- 10. From the evidence and materials on record, it reveals that the case of the prosecution is that there was a love affair between Kabirt Ali and PW1 Miss X and she got pregnant by the accused. Later a valid marriage was solemnized between Miss X and the accused. There is no evidence from the side of prosecution that the accused Kabir had committed to marry Miss X within a

specific period. In this case doctor has not been examined. But as per the medical examination report of the victim Miss X, doctor opined her to be the age of 20 to 22 years. Though it is the submission from the side of the prosecution that at the time of the incident the victim was a minor, but no documentary evidence has been submitted in this regard. The available document to show about the exact age of the victim is the medical report prepared by the doctor in connection with this case. Therefore, it is proved that at the time of the incident the victim was above 18 years. It has also not come after examining the prosecution witnesses that the accused had given a time limit to marry the victim girl. According to the victim till her examination before this Court in this case no marriage was solemnized between the accused and her. PW3 Sabjan Begum is the mother of the victim Miss X . She stated before this Court that marriage between Miss X and the accused had already been performed. Their marriage was solemnized in the Court and thereafter, a social marriage was held. PW4 also states that Miss X was married to Kabir. It has come in the evidence of victim Miss X that she remained in the house of the accused for two months and thereafter, she was driven out after beating her. It is surprising to note that how a girl was allowed to live with a person for two months when there is no formal marriage between them by her guardian. It is seen that there is a contention against the accused that he had driven out the victim Miss X from his residence. Though according to the informant the victim is shown as minor being 17 years at the time of the incident, but the medical examination report shows that at the time of her examination she was 20 to 22 years and at that time she was carrying live fetus of 21 weeks 3 days. Therefore, it can safely be presumed that this instant case is a counter of the grievance that the victim was thrown out by the accused after beating her from his residence. Therefore, the evidence available before this Court are not sufficient to hold the accused person guilty against the alleged offence.

11. Hence, the accused Kabir Ali is acquitted for want of credible evidence and set at liberty forthwith.

12. Given under my hand and seal of this Court this 30th day of August,2019.

(P.K.Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

(A)Prosecution witnesses:

(i)PW1 Miss X (ii)PW2 Kafiluddin (iii)PW3 Sabjan Begum (iv)PW4 Abdul Aziz

(B)Defense witness: Nil.

(C)Exhibit:

(i)Ext.1 statement of victim

Sessions Judge, Darrang, Mangaldai.