IN THE COURT OF ADDL SPECIAL JUDGE (FTC)::KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.29/2018

U/S. 4 of the Protection of Children from Sexual Offences Act, 2012

STATE OF ASSAM

Vs

Sri Abdul Kader Zelani S/o Poniruddin Munshi vill: Jaldoba Part-II P.S Kazigaon Kokrajhar

...... Accused person

Appearance: -

Learned Counsel for the State Mr. Manjit Ghosh, Special P.P.

Learned Counsel for the defence Mr. A.K. Miah

Charge framed on 30.1.2019

Evidence recorded on 15.2.2019, 1.3.2019, 1.4.2019

15.3.2019, 1.4.2019

Argument heard on 30.4.2019

Judgment pronounced on 30.4.2019

JUDGMENT

1. The case of the prosecution is that on 16.1.2016 one Manik Ali Sheikh lodged a writen FIR at Rupshi Police out-post alleging that accused Abdul Kader Zelani is a President of Jaldoba School and also a member of Youth Congress. On 16.1.2016 while he was away from home, the accused came to his residence and took his minor daughter, aged

about 9 years, for getting her a Sewing machine. On the way to Rupshi, accused committed rape on the victim and also threatened her not to disclose the matter to anyone.

- 2. The FIR was forwarded to Kazigaon Police Station. On receipt of the FIR, a case U/S 376(2)(i) IPC read with Section 4/6 of the Protection of Children from Sexual Offence Act (POCSO) was registered and investigated. After completion of the investigation, a charge sheet was laid against the accused Abdul Kader Zelani for commission of offence U/S 376(2)(i) IPC read with Section 4/6 of the POCSO Act. The case was transferred to this Court for disposal.
- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to them.
- 4. Upon hearing both sides, charges U/S 376 IPC read with Section 4 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed to trial.
- 5. In the course of trial prosecution examined 6 witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

POINTS FOR DETERMINATION:-

(i) Whether the accused committed rape on the victim, a minor girl?

DECISION AND REASONS:

- 6. Pw 1 Mukul Chandra Roy deposed that about 3 years back while he alon with his friend Haren rabha were going towards Gauripur in his car, he noticed a small girl who was crying. Pw 1 deposed that he came down from his vehicle and brought the girl to his residence. Pw 1 further deposed that on his inquiry with the girl, she told that accused has committed rape on her while he was going along with the accused towards Rupshi. Pw 1 then deposed that she handed over the girl to her father.
- 7. Pw 2 xxxx is the mother of the victim. She deposed that accused had taken her daughter to Rupshi for getting her a sewing machine. Later, her daughter came home crying and on being asked she told she fell on the ground and thereafter ran towards home. Pw 2 deposed that the age of the victim is about 13 years
- 8. Pw 3 xxxx, is the father of the victim and the informant. He too deposed that his daughter fell on the ground and became unconscious.
- 9. Pw 3 was declared hostile by the Special Public Prosecutor but he was cross-examined onlu with respect to the statement under Section 161 of CrPC. A statement under Section 161 CrPC is not an evidence, if it is established.
- 10. In cross-examination by the defence, pw 3 deposed that he does not know reading and wrting and he does not know the contents of the FIR.
- 11. Pw 4 xxxx, is the victim. She deposed her present age to be 16 years. She stated that about 2 and half years back, the accused came to

her residence in the morning hours and told her mother that a sewing machine would be given to her and hence he wanted to take her. Her mother allowed her to accompany the accused. Accused took her in his bi-cycle. She was sitting behind the bi-cyle. In the jungle area, she fell down from the bi-cycle and became unconscious. After she regained her senses, she saw the accused standing. Pw 4 also deposed that accused wanted to take her again for getting her a sewing machine but she refused. Thereafter accused left. Soon afterwards, some persons came in a car and asked her about the incident. They then took her to her residence. Pw 4 also deposed that her father had lodged an FIR with the police.

- 12. In cross-examination, she deposed that she had given the statement under Section 164 CrPC as tutored by Police.
- 13. Pw 5 Kulsum Bibi deposed that she only knows that accused had taken the vicitm in his cycle but she does not know anything else about the case.
- 14. Pw 6, the Medical Officer deposed that though she did not find any trace of spermatozoa in the vaginal smear of the victim, she did find injuries on her private parts.
- 15. The medical evidence on record suggests that the victim was indeed subjected to forced sexual intercourse. The question is whether the accused can be said to be guilty of the offence? In view of the nature of the evidence tendered by the parents of the victim and the victim herself, it is evident that they are reluctant to speak the truth. These material witnesses have completely absolved the accused of any

wrongdoings. The nature of evidence is such that no conviction can be sustained.

16. In the result, the point for determination is answered in negative.

ORDER

Accused Abdul Kader Zelani is acquitted of the charge under Section 376 IPC read with Section 4 of the POCSO Act and set at liberty forthwith.

His bail bonds is extended till six months.

A recommendation is made to the District Legal Services Authority, Kokrajhar for considering payment of compensation to the victim under Section 357A CrPC.

Given under the hand and seal of this Court

Dictated by: -

Addl. Special Judge,

Addl Special Judge

Kokrajhar

Kokrajhar

APPENDIX

Prosecution witness

Pw 1 Mukul Chandra Roy

Pw 2 xxxx the mother of the victim

Pw 3 xxxx the father of the victim

Pw 4 xxxx the victim

Pw 5 Kulsum Bibi

Pw 6 Dr. Sushma Brahma, Medical Officer

Prosecution Exhibit

Ext 1 FIR

Ext 2 Statement under Section 164 CrPC

Defence Exhibit Nil

Addl. Special Judge

Kokrajhar