

Special (POCSO) Case No. 29/2019.

(U/S - 448/376 of IPC read with Sec. 4 of POCSO Act, 2012.)

State of Assam

-Versus-

Alim Uddin

...... Accused.

PRESENT: Shri D. Bhattacharjee, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person :- Sri J.U. Laskar, Ld. Advocate.

Date of recording evidence

:- 06.11.2019.

Date of recording statement u/s 313, CrPC :- 08.11.2019.

Date of Argument

:- 08.11.2019.

Date of Judgment

:- 08.11.2019.

JUDGMENT

1. The prosecution case, in brief, is that on 11.08.2015 the informant Monir Uddin Mazumder lodged an ejahar with the I/C, Bilaipur Police Outpost, alleging that on 07.08.2015 at about 12 Noon, taking the advantage of absence of himself and his wife, the accused person Alim Uddin came to his house and tried to commit rape on his minor daughter, the victim and thereby the accused outraged her modesty.

On receipt of the ejahar, after making GDE No. 140 dated 11.08.2015, the same was sent to the O/c, Lala Police Station and accordingly, Lala PS Case No. 387/2016 under Sec 448/354, IPC was registered and during

Contd......P/2.

investigation, police visited the place of occurrence, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC and after completion of investigation submitted charge sheet against the accused person Alim Uddin under Sec. 448/354, IPC showing him absconder.

- 3. On appearance of accused person Alim Uddin, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Alim Uddin under Sec.448/376/ of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined the victim and her father, the informant only. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- **6.** Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION:-

(i) Whether the accused person on 07.08.2015 at about 12 Noon at village Dhalcherra under Lala PS committed house trespass by entering into the house of the informant with intent to commit certain offence and thereby, the accused committed an offence punishable under Sec. 448, IPC?



- (ii) Whether the accused person after entering into the house of the informant, committed rape on her daughter and thereby, the accused has committed the offence punishable under Sec. 376, IPC?
- (iii) Whether the accused person committed penetrative sexual assault on the victim, the minor daughter of the informant, and thereby, the accused person has committed the offence punishable under Sec. 4 of the POCSO Act,2012?

DISCUSSION, DECISION AND REASONS THEREOF:

The victim (PW.1) has deposed that at the relevant time, she was aged 20 years. The accused person did not commit any bad act with her but her father had land dispute with the accused and out of that, he filed the case against the accused with false allegation. The victim has further deposed that during investigation, police got her medically examined and she made her statement before Magistrate on being tutored by her father.

In cross examination, the victim has stated that she has got 2 children and she is living peacefully with her husband.

- The PW.2, the informant Sri Monir Uddin Mazumder has deposed that on the relevant day, when he returned home, her daughter i.e. the victim told him that the accused pelted stones in their house and thereafter, his (the informant) brother in law came and he took the informant to the police station and asked him to put thumb impression on some paper and accordingly, he did so. It is further deposed by the informant that out of misunderstanding, the case was filed against the accused and the accused did not do any bad act with his daughter.
- 9. In the instant case, though the informant, who is the father of the victim, has penned implication against the accused in the ejahar but in the evidence the victim has clearly divulged that the accused did not commit any bad act with her and her father filed the case against the accused with false allegation out of land dispute. It is also made clear by the victim that she made her statement before



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the Magistrate on being tutored by her father. Moreover, the informant also in his evidence has made it clear that out of misunderstanding, the case was filed against the accused. As such, when the victim herself, whose evidence bears much significance to decide such type of cases, has not supported the prosecution case, I do not find any cogent reason to hold the accused person guilty for the commission of the offence, alleged.

- 10. In fine, the accused person Alim Uddin is acquitted of the offence charged under Sec. 448/376 of the IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- **11.** The bail bond of the accused stands discharged.
- **12.** The Special (POCSO) case is disposed of accordingly.

The judgment is delivered today, on this the 8th day of

November, 2019.

Special Judge, Hailakandi.

<u>Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.</u>

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Appendix :-

Oral evidences :-

PW. 1, the victim,

PW. 2, the informant.

Documentary evidence :-

Nil.

Defence did not adduce any evidence.

Special Judge, Hailakandi