IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, <u>Sivasagar</u>.

Spl. (P) Case No. 21 of 2015 U/S 4 & 14 of POCSO Act. (Arising out of Simaluguri P.S. Case No. 205/2013)

State of Assam

-Vs-

Md. Akibur Rahman Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, Special P.P. For the accused : Syed A. R. Rohman, Advocate

Date of framing Charge : 14.09.2015

Dates of Evidence : 26.11.2015, 11.07.2016, 23.12.2016,

26.07.2017

 Date of S/D
 :
 13.11.2017

 Date of Argument
 :
 13.11.2017

 Date of Judgment
 :
 13.11.2017

JUDGMENT

- 1. Prosecution case, in brief, is that on 16.12.2012, victim 'N' (name withheld) lodged an FIR with I/C, Tengapukhuri Out Post alleging, inter alia, that about six months back, by criminally intimidating her, accused Akibur Rahman has committed rape on her and prepared a video of the said incident on his mobile. As the accused threatened her for death, she did not disclose the fact to others. But on the previous day of lodging FIR, the accused made the said video public and hence she was compelled to file this FIR.
- 2. On this FIR, Tengapukhuri O.P. G.D. Entry No.239, dated 16.12.12

was made and FIR was forwarded the same to Mathurapur P.S. for registering a case and accordingly Mathurapur P.S. Case No. 111/12, U/S 376/506 IPC, read with Section 67 I.T. Act was registered and investigated into. Later on, due to jurisdictional issue of place of occurrence of the incident, the FIR was transferred to Simaluguri PS and reregistered as Simaluguri PS Case No. 205/2013 and investigated into. Accused was arrested and was released on bail in due time. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 376/506 IPC, read with Section 4 and 14 (2) of POCSO Act, 2012.

- 3. On submission of charge sheet, the case was transferred to this court for trial. After furnishing copy to the accused person, vide order dated 14.09.2015, my learned predecessor in office has framed the charges U/S 4 and 14 of POCSO Act, 2012 against the above named accused person to which he pleaded not guilty. During trial, prosecution has examined four witnesses including the victim and M.O.
- 4. Upon completion of the prosecution evidence, accused is examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Considering the nature of evidence, the case is disposed by using powers u/S 232 Cr.P.C without calling the accused to enter into defence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Syed A.R. Rohman, learned defence counsel and gone through the evidence and documents.

POINTS FOR DETERMINATION ARE

- 6 (I) Whether the victim 'N' was subjected to penetrative sexual assault by the accused against her will?
 - (II) Whether on the previous day of filing FIR, accused telecasted the pornograph video of the victim 'N'?

DECISION AND REASONS THEREOF

7. P.W. 1, the victim 'N' in her evidence deposed that she had love

affairs with the accused and on the day of incident, she went for visit with him. However, as he was of different religion and on raising objection by the local public, due to some misunderstanding, she lodged the FIR vide Exbt.1. After this incident, she got married with another person and leading her conjugal life peacefully. At the time of incident she was aged about 18 years. Accused did not misbehave her. In her cross she admitted that she has no objection in acquitting the accused.

- 8. P.W. 2 Sri Bitu Konwar in his evidence deposed that on 15.12.2012, on knowing that accused is showing some indecent video in his mobile, he along with some members of student union came to Police Station and handed over the accused and his mobile. Police seized the said mobile vide Exbt. 3, the seizure list. In his cross he stated that Exbt. 3 is a xerox copy. He has no knowledge about the SIM number etc. or existence of any memory card. He denied that accused did not keep any indecent video in his mobile.
- 9. P.W. 3 Sri Palash Konwar in his evidence deposed that about three years back, he saw a video of a female student at the mobile of accused and handed over the said mobile and accused to Police Station. Police seized the said mobile. He denied that he has not seen any such video.
- 10. P.W. 4 Dr. Diganta Chetia, the M.O. in his evidence deposed that on 17.12.2012 he examined the informant/victim 'N' and did not find any injury on her person. However he did not give any opinion in his report Exbt.4 due to non-receipt of other examination report.
- 11. From the above evidence on record, particularly from the evidence of P.W. 1, the victim, it appears that she is totally silent regarding any sort of sexual assault on her by the accused not to speak about penetrative sexual assault. The victim nowhere complained regarding recording of any pornographic video relating to her by the accused or making it public. She has admitted that accused did not misbehave her while she went with him for visit. P.W. 2 has simply stated that on knowing the fact of spreading of an indecent

video they have apprehended the accused and handed over to police. He did not state that the said video was seen by him or it relates to victim. P.W. 3 though stated about seeing of a video in the mobile of the accused, but he is silent as to whether the contents of the said video was indecent or anywhere related to the victim of this case. So from the above evidence it appears that there is no material at all against the accused for the charges framed.

- 12. Considering all above, I am of the opinion that prosecution has failed to prove the charge U/S 4 and 14 of POCSO Act, 2012 against the accused Akibur Rahman and accordingly accused Akibur Rahman is acquitted from the aforesaid charges and set at liberty forthwith.
- 13. Seized mobile is confiscated to State of Assam as accused has declined the ownership of the said mobile phone.
- 14. Bail bond executed by the accused and his surety stand extended for another six months from today.
- 15. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation U/S 357-A Cr.P.C.
- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 17. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 13th day of November 2017 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX:

1. Prosecution witnesses -

- P.W.1 Smt. Niki Phukan (victim)
- P.W.2 Sri Bitu Konwar
- P.W.3 Sri Palash Konwar
- P.W.4 Dr. Diganta Chetia (M.O.)
- 2. <u>Defence witnesses</u> Nil.
- 3. <u>Court witnesses</u> Nil.
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Statement of the victim U/S 164 Cr.P.C.
 - Exbt.3 Seizure list.
 - Exbt.4 Medical examination report.
 - Exbt.5 Charge-Sheet.

Special Judge, Sivasagar: