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

Present :- Sri C. Chaturvedy, AJS

SPECIAL CASE NO.23/2019

Section 450/376 of IPC R/W- Sec. 4 of the POCSO Act, 2012.

STATE OF ASSAM

Vs

Sri Abdul Basit @ Sahinur S/o- Sirajul Hoque Vill- Asharikandi Pt-III P.S. Gauripur, Dist.- Kokrajhar

...... Accused person.

Appearance: -

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

Learned Counsel for the defence Sri A.K. Miah, Advocate

Charge framed on 31.05.2019

Evidence recorded on 4.6.2019, 12.7.2019,19.8.2019.

Argument heard on 27.09.2019

Judgment pronounced on 30.09.2019

JUDGMENT

1. The case of the prosecution is that on 20.04.2019 one Sri Simon Hasda, lodged a written FIR at Tipkai Police out-post alleging that on 19.4.2019, accused Abdul Basit @ Sahinur has been carrying raw materials for the construction of a mobile tower in their village. The informant also alleged that on 19.4.2019, accused Abdul Basit @ Sahinur entered into the residence of his grandchild and committed rape on her and when the victim raised a hue and cry, the neighbouring people gathered and apprehended the accused.

Note:- This is not certified copy. Contact the Office of District & Sessions Judge, Kokrajhar, for a certified copy.

- 2. On receipt of the FIR, it was sent to Bagribari Police station for registration of a case and accordingly a case under Section 448/376 IPC read with Section 4 of the POCSO Act was registered and investigated. After completion of the investigation, a charge sheet was laid against the accused Abdul Basit @ Sahinur for commission of offences under Section 448 IPC read with Section 4 of POCSO Act. .
- 3. The accused person was in custody. On his production, copies of the relevant documents were furnished to him and after hearing both the side charges under Section 450/376 IPC read with Section 4 of POCSO Act were framed against him to which he pleaded not guilty and claimed trial. During the pendency of trial, the case was transferred to this Court for disposal.
- 4. In the course of trial, prosecution examined 6 witnesses. At the closure of prosecution evidence, accused was examined under Section 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

POINTS FOR DETERMINATION:-

a. Whether the accused committed sexual intercourse with the victim, a child?

DECISION WITH REASONS: -

- 6. Pw 1 is the victim of this case. She deposed that accused had come to their residence seeking water. At that time some villagers gathered and became very angry seeing the accused in our residence and they started beating her, her mother and her father.
- 7. Since the victim resiled from her statement under Section 164

CrPC, learned Special P.P declared the witness as hostile and sought leave to cross-examine the witness and accordingly cross examination was allowed. In cross-examination by prosecutor, the victim admitted that accused had come to their residence for drinking alchohol. She also admitted that accused had entered into her room for drinking water. Pw 1 also admitted that she had stated before the Magistrate that accused had sexual intercourse with her.

- 8. In cross-examination by the defence, the victim however, stated that accused did not have any sexual intercourse with her and that she gave the statement under fear and as tutored by the people.
- 9. Pw 2 Hopna Tudu deposed that on the day of occurrence while along with Sankar were returning from a function he heard noise coming from the residence of Sagram Hasda, the father of the victim. When he approached the house and peeped through a hole, he saw the accused having sexual intercourse with the victim. Accused opened the door and wanted to run away but he and Sankar Hasda apprehended the accused and informed the Gaonburah.
- 10. In cross-examination, pw 2 denied the suggestion he has deposed falsely.
- 11. Pw 3 Sankar Hembrom also deposed in the lines of pw 2 that he had seen the accused committing sexual intercourse with the victim.
- 12. Pw 4 Simon Hasda is the informant. He deposed that he is a Gaonburah. He deposed that some villagers came to his house and

informed that accused has been found sleeping with the victim. He lodged an FIR in this regard.

- 13. In cross examination, he deposed that he lodged the FIR as per the instruction of the villagers. He also deposed that he had not talked to the victim before lodging the FIR.
- 14. Pw 5 xxx is the mother of the victim. She deposed that accused had come to their residence and while he was having some food, some villagers came and apprehended the accused.
- 15. Since pw 5 resiled from her statement under Section 161 CrPC, learned Special P.P declared the witness as hostile and sought leave to cross-examine the witness and accordingly cross examination was allowed. In cross-examination by prosecutor, pw 5 deposed that she has settled the dispute with the accused and the villagers had settled the matter. She denied the suggestions with respect to the statements given to police.
- 16. In cross-examination by the defence pw 5 stated that villagers had beaten her on the ground as to why a person of different community has been allowed an entry in our house. She deposed that accused had no conversation with her daughter and that the accused is innocent.
- 17. Pw 6 is the Investigating Officer and he deposed to about the steps taken during investigation.
- 18. The principal prosecution witnesses, namely, the victim and her mother have not supported the prosecution case. They have categorically stated that accused had come to their residence only to drink water and nothing else. Seen from the perspective of the

- evidence of pw 1 and pw 5, no case has been made out for sustaining conviction of the accused for the offences charged with.
- 19. There are two witnesses, namely Pw 2 Hopna Tudu and Pw 3 Sankar Hembrom who deposed that they are witnesses to the fact that accused was seen by them while committing sexual intercourse with the victim.
- 20. Thus, there are two version of the prosecution case, one version as deposed to by the alleged victim and her mother, and the other by pw 2 and pw 3. In my opinion when the victim herself deposes that accused did not have any sexual intercourse with her, such evidence being corroborated by her mother, the evidence of pw 1 and pw 5 will get precedence over the evidence of pw 2 and pw 3. In any view of the matter a doubt is created whether the accused committed sexual intercourse with the victim or not. When such a doubt exists in view of two contradictory version of the prosecution, the benefit of such doubt has to go the accused.
- 21. In the result, the point for determination is answered in negative.
- 22. In the facts and circumstances of this case, I believe the victim of this case is in need of care and protection. Hence, let a copy of this judgment be sent to Child Welfare Committee, Kokrajhar, for taking necessary steps for the welfare of the child.

ORDER

Accused Abdul Basit @ Sahinur is acquitted of the charges under Section Section 450/376 IPC read with Section 4 of POCSO Act and set at liberty forthwith.

Given under the hand and seal of this Court.

Dictated and Corrected by:-

Addl. Special Judge (FTC) Kokrajhar Addl. Special Judge (FTC) Kokrajhar

APPENDIX

A. Prosecution Witness

i)	PW1	xxx victim

ii) PW2 Hopna Tudu

iii) PW3 Sankar Hembrom

iv) PW4 Simon Hasda

v) PW5 Muni Mardi

vi) PW6 ASI Angaraj Chetry

B. Defence Witness

Nil

C. Prosecution Exhibits

i)	Exhibit No-1	Statement U/S-164 CrPC of PW1
ii)	Exhibit No-2	Statement U/S-164 CrPC of PW2
iii)	Exhibit No-3	Statement U/S-164 CrPC of PW3
iv)	Exhibit No-4	FIR.
v)	Exhibit No-5	Seizure List
vi)	Exhibit No-6	Seizure List.

Sketch Map.

D. Material Exhibit

Exhibit No-7

vii)

i) M. Exhibit No-1 Birth Certificate.

Addl. Special Judge (FTC) Kokrajhar