# IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR SPECIAL POCSO CASE NO. 59 of 2018

Under section 417 IPC read with section 4 of POCSO Act.

(Arising out GR Case No 2526/18)

#### **State of Assam**

-Vs-

Md. Sorhab Ali ... Accused Person

Present : Smti I. Barman,AJS, Special Judge, Sonitpur, Tezpur.

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For the State : Mr. M.C. Baruah,

Special Public Prosecutor

For the accused : Mr. B. Basumatary, Advocate.

Date of Argument : 23-09 -2019

Date of Judgment : 25-09-2019.

### **JUDGMENT**

The genesis of the present case is that for last eight months, the accused Md. Sorhab Ali, assuring to marry, did have physical relation with the daughter of the informant, aged about 16 years, as a result of which she carried pregnancy. At first though the accused Md. Sorhab Ali and his father Jainal Ali agreed to marry the victim but lateron did not marry her. Knowing about her pregnancy accused 's father Jainal Ali gave some tablets to the victim to cause her abortion but she did not consume the same. It is further alleged that on 24-06-2016 accused Sorhab Ali and his father Joynal Ali rebuked the victim and her family

members in front of her house using filthy language and also threatened to kill them and to set fire their house.

- 2. Upon receipt of the FIR **(Ext.1)** on 25-06-2018 from the informant (PW1), GD Entry No. 583 dated 25-06-2018 was entered and forwarded the same to the O/C Tezpur PS for registering a case. Accordingly, Tezpur Police station registered the case being Tezpur P.S. Case No. 1330/18 u/s 420/314/511/506/34 of IPC read with section 4 of POCSO Act was registered and entrusted SI Aminul Islam to complete the investigation of the case. In course of investigation, the Investigating Officer (PW 8) recorded the statement of the witnesses, sent the victim for medical examination, got her statement recorded u/s 164 Cr.P.C. and on completion of investigation having found materials, laid chargesheet against the accused Sorhab Ali u/s 420 IPC read with section 4 of POCSO Act by another Investigating Officer (PW 9).
- **3.** After appearance of the accused person before this Court, furnishing the necessary copies of the documents as required u/s 207 of Cr.P.C. and having heard both parties, charge was framed against the accused Md. Sorhab Ali u/s 417 of IPC read with section 4 of POCSO Act by my learned predecessor and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.
- 4. To substantiate the case, prosecution examined as many as nine witnesses. On closure of the prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. wherein the accused denied all the incriminating evidence that emerged against him stating that the villagers performed their marriage and they resided together at his home but lateron the parents of the victim by assaulting, had taken her to her parental house. Defence examined none.
- **5.** The points for decision in this case is that -
  - (1) Whether accused Md. Sorhab prior to 25-06-2018 at Bhomoraguri, Bhojkhwa chapori

under Tezpur Police station cheated Miss "X" by inducing her to have sexual intercourse with him promising to marry her and thereby committed an offence punishable under section 417 of IPC?

(3) Whether accused Md. Sorhab Ali committed penetrative sexual assault on the child victim under the age of 18 years and thereby committed an offence punishable u/s 4 of POCSO Act?

## Reasons, Decisions and reason for decision.

- **6.** Mr. Baruah, the learned Special Public Prosecutor submitted that the evidence of the victim inspire confidence that she had love affair with the accused and that the accused with the assurance of marrying her undergone intercourse with her for which the victim carried pregnancy of 6 months at the time of filing the case and lateron she gave birth to a baby. It is further submitted that as the prosecutrix is a minor one at that time, hence consent is irrelevant in the present case and the accused is guilty for committing penetrative sexual assault on the child victim.
- **7.** Refuting the argument of the learned Special P.P., Mr. B. Basumatary, appearing for the accused argued that in the case the prosecution failed to prove the age of the victim to be held as a minor as claimed and as such, it does not come within the ambit of POCSO Act. The learned counsel also made a lengthy submission that the prsoecutrix was in love with the accused and if she maintained sexual relation, it was done voluntarily and as admittedly the accused married the girl, it cannot be said to be a breach of promise and cannot be said to be a case of rape.

- **8.** Considering the rival submissions advanced by the learned counsel of the parties, having regard to the evidence on record, it would be apposite to have a bird's view of the evidence on record.
- 9. PW 1, victim's mother testified that prior to the incident, her victim daughter got married with the accused Sorhab and thereafter they lived together as husband and wife for about 8 months but when her daughter became pregnant, accused Sorhab refused to allow her to stay in his house. Hence, her daughter was residing in her parental house along with the child. Then she lodged the FIR, Ext.1. She admitted that the age of her victim daughter was 18 years at the time of the incident.
- 10. PW 2, victim's father stated that the accused got married his daughter by performing Nikah and executing Kabil nama before the Kaji. After marriage, his daughter and the accused used to stay in his house. But when his daughter became pregnant, the accused denied the paternity of the baby of the womb, hence, his wife lodged the FIR against the accused. He again stated that before performing Nikah, his daughter became pregnant. During cross he admitted that due to misunderstanding, his wife lodged the FIR against the accused.
- 11. PW 3, the victim, deposed that before performing marriage with the accused, due to love she had physical relation with him and became pregnant. Thereafter, her marriage was performed by the villagers with the accused and after marriage he used to reside in her parental house and she gave birth to a child but the accused refused the paternity of the child and leaving her there went to his house. Then her mother lodged the FIR. She admitted that her marriage was performed according to Muslim Chariat with the consent of guardian of both the parties but due to misunderstanding the case was filed.

- **12.** PW 4 Mustafa Ahmed testified that victim carried pregnancy for having relation with the accused when she was 16/17 years old and gave birth to a child.
- **13.** PW 5 Wahida Begum only heard that accused Sorhab Ali committed rape on the victim and lateron she gave birth to a child but she did not know through whom she carried pregnancy.
- 14. PW 6 Ator Ali, the neighbour of the informant deposed that hearing about the pregnancy of the daughter of the informant, he went to the house of the informant and on being asked, the victim told that accused did have physical relation with her promising to marry her, as a result, she became pregnant. Regarding the incident, they called a meeting and asked the accused to marry the victim girl but the accused's father refused and thereafter, the accused fled away. Hence, the case was filed. Lateron the victim gave birth to a female child and presently, the victim is residing with her parents. According to this witness, the victim was 15/16 years old at the time of the incident.

During cross, he admitted that on assumption he stated the age of the victim as 15/16 years.

- **15.** PW 7, Dr. Jerina Nazrin, the Medical Officer deposed that on 30-06-2018 she examined the victim and found hymen absent, P/A fundal height 24 weeks but found no any injury mark on her body as well as on her private parts. There was no sign of recent sexual intercourse. Doctor could not opine the age and gestational status due to non availability of reports. She proved the medical report as Ext. 3 and vaginal smear report as Ext. 4.
- **16.** PW 8, ASI Budhan Borah, the Investigating Officer, visited the place of occurrence, recorded the statement of the victim and other witnesses, drew the sketch map of the place of occurrence vide Ext.5, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C., arrested the accused and after collecting the medical report he handed over the case diary to the

- I/C. PW 9, SI Aminul Haque, another Investigating Officer submitted the charge sheet against the accused Sorhab Ali u/s 420 of IPC read with section 4 of POCSO Act vide Ext. 6.
- **17.** Now, the guestion is whether the above evidence is sufficient to show that the victim girl was under 18 years of age at the time of occurrence. No document was produced to ascertain the age of the victim. Though in examination-in-chief, PW 4 stated that at the relevant time the victim was 16/17 years and according to PW 6 the neighbour she was 15/16 years old but both the witnesses during cross admitted that they mentioned the age of the victim only on assumption. On the other hand, PW 1 victim's mother who is the best person to say the age of her children, clearly stated that at the relevant time, the victim was 18 years. The victim in deposition also mentioned her age as 18 years. In the above evidence, particularly from the evidence of the victim's mother, it can be safely held that the victim was major at the time of the incident and as such, the victim being not a child, it does not come within the ambit of POCSO Act.
- **18.** Now, let us see what offence the accused committed.
- 19. In this case, the evidence of the victim, the most vital witness, reveals that out of love she did have sexual relation with the accused as a result of which she carried pregnancy and thereafter, the villagers performed their marriage. After marriage they resided together in her parental house and she gave birth to a female child. She alleged that thereafter the accused refusing the paternity of the child, left for his house and then her mother lodged the FIR. She admitted that her marriage was performed with the consent of the guardian of both the parties but due to misunderstanding, the case was filed. Victim's parent PW 1 and PW 2 also admitted the marriage of the victim with accused Sorhab Ali. On careful scrutiny of the evidence of the victim and her parents it clearly indicates that the victim had love with the accused and she voluntarily maintained physical

relation with him, as a result she carried pregnancy. It is also in the evidence of the victim and her mother that at that time she was 18 years old attaining the age of giving consent. Knowing about her pregnancy, the villagers performed their marriage before Kaji and thereafter the couple resided in her parental home. She appears to be a consenting party in committing sexual act. The victim in deposition never stated that the accused committed her rape. In the above, I am of the considered opinion that no offence of rape is made out against the accused.

- Regarding offence u/s 417 IPC though in the FIR it is 20. alleged that the accused promising to marry, did have physical relation with the victim girl but neither in statement u/s 164 Cr.PC nor in evidence the victim alleged that the accused did have physical relation assuring to marry her. Rather from the evidence of the Pws including the victim herself it is clear that the victim being a major one willingly consented to have physical relation with the accused. On the other hand, it is not the case that the accused did not marry her, rather admittedly he married her and thereafter resided together, which is admitted by the victim herself. Though the victim and the parents alleged that the accused denied the paternity of the child but in statement u/s 313 Cr.P.C., accused Sorhab Ali admitted the paternity of the child of the victim. He admitting the marriage with the victim stated that lateron her parents by assaulting had taken her to her parental home. In view of the above evidence on record, I am of the considered opinion that the prosecution has not been able to prove the offence of cheating u/s 417 IPC against the accused Sorhab Ali.
- **21.** In the above, facts and circumstance of the case, I unhesitatingly hold that the prosecution failed to establish the charge against the accused. Accordingly, accused Md. Sorhab Ali is acquitted from the charge u/s 417 IPC and section 4 of POCSO Act or offence of rape and set him at liberty forthwith. His bail

bond shall extended till next six months in view of section 437 A of Cr.PC.

22. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the 25<sup>th</sup> day of September, 2019.

(I.Barman) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(I.Barman)
Special Judge,
Sonitpur,Tezpur.

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## APPENDIX.

### **Prosecution witnesses.**

1. PW 1 : mother of the victim. 2. PW 2 : father of the victim.

3. PW 3 : Victim

4. PW 4 : Mustafa Ahmed, 5. PW 5 : Wahida Begum.

6. PW 6 : Ator Ali

: Dr. J. Nazrin (M.O.) 7. PW 7 8. PW 8 : ASI Budhan Borah, I.O. 9. PW 9

: SI Aminul Islam, another I.O.

## Exhibits.

Ext. 1

Ext. 2 victim's statement u/s 164 Ctr.P.C.

Ext. 3 & 4 medical report & Vaginal smear report

Ext. 5 sketch map

charge sheet.

(I.Barman) Special Judge, **SONITPUR: TEZPUR**