IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.14/2019

State of Assam

Versus

Md Ajrul Ali Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr I. Hussain

Evidence recorded on : 30.10.2019

Argument heard on : 06.11.2019

Judgment delivered on: 06.11.2019

J U D G M E N T

1. The prosecution story in brief is that on 15.7.2014 the complainant Md Jahan Uddin Sk. lodged the complaint petition before the learned Chief Judicial Magistrate, Kokrajhar stating that on the Ist day of month of Bohag at about 10 A.M. taking advantage in absence of the informant and his family members the accused Md Ajrul Ali entered into the house of the informant and raped his daughter Mosstt Maleka Begum. It is also stated that on the same day at about 5 P. M. the accused again entered

into the house of the informant and proposed to marry his daughter in future. Thereafter, the accused Ajrul Ali committed rape on the victim for several times and the victim reported about the matter to her parents and relatives. Hence, the complaint petition.

- 2. On receipt of the complaint petition in the court of the learned Chief Judicial Magistrate, Kokrajhar the same was forwarded to the Officerin-charge of Fakiragram P.S. for registration of the case. Accordingly, a case has been registered as Fakiragram P.S. case No.53/2014 under sections 376/109/506 of IPC and the case was endorsed to the S.I. L.C. Sikdar, In charge Chithila, P.P. for investigation. During investigation the I.O. visited to the place of occurrence, recorded the statement of the witnesses and the victim was medically examined and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 376/109/ 506 of IPC, Read With Section 4 of POCSO Act against the accused Ajrul Ali. Relevant copies accordingly furnished to the accused by this court and the charge under section 506 of IPC, Read With Section 4 of POCSO Act were framed against the accused person finding a prima-facie case. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 03 (Three) number of witnesses including the informant and the victim as follows:-

PW 1 Md Jahanuddin Sk. (Informant),

PW 2 Mosstt Ahorbhan Bibi,

PW 3 Mosstt Maleka Bibi (Victim).

4. The accused person did not examine any witnesses in support of his case. Recording the statement of the accused person under section 313 Cr.P.C. was dispensed with as there was no incriminating material against the accused person.

5. **Points for determination:**

- (1) Whether the accused committed criminal intimidation by threatening the victim Maleka Begum with intent to cause alarm to the said person?
- (2) Whether the accused committed the offence of penetrative sexual assault to the victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1 and PW2 are parents of the victim deposed that the accused is their son-in-law and the incident took place about 3/4 years ago and the victim is their daughter. Further it is stated that their daughter had love affairs with the accused and due to misunderstanding the informant lodged the first information report against the accused and they got married and at present they are living together as husband and wife. In their cross evidence they stated that at the time of incident their daughter was more than 18 years and at present she is more than 22/23 years.
- 8. PW3, victim of this case deposed that the complainant is her father and the accused is her husband. The incident took place about 4/5 years ago and she had love affairs with the accused. Further it is stated that

her father lodged the first information report due to previous enmity and as per instruction of her uncle without any consultation with her. She got married with the accused and has been living peacefully with the accused as husband and wife and out of their wedlock they have a daughter. In her cross evidence she stated that at present she is more than 23/24 years of age and she got married with the accused. She also stated that at the time of incident she was more than 18 years and she has no knowledge about the case lodged by her father.

- 9. From the testimonies of prosecution witnesses it is seen that the most vital witnesses of the prosecution i.e. the informant (PW1) and the victim (PW3) have not supported the case. The victim had love affairs with the accused and she got married with the accused and at present they have been living together as husband and wife. The other vital witness i.e. the informant also stated that due to misunderstanding he lodged the first information report against the accused.
- 10. Admittedly the victim got married with the accused and had physical relationship with the accused. But, to attract a case under section 4 of POCSO Acct, the most vital point is the age of the victim. But, here in the instant case prosecution could not prove the minor age of the victim at he time of incident. Rather, it is evident that she was more than 18 years of age at the time of incident and out of love affairs got married with him.
- 11. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Md Ajrul Ali under section 506 of IPC, Read With Section 4 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

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The judgment is delivered in the open court and given under my hand and seal of the court on this 06th November/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar