# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

## JUDGMENT IN SPL.(POCSO) CASE NO. 24 (DH)/ 2017.

U/S 313/376 of IPC R/W Sec.4 of POCSO Act.

### The State of Assam

- Versus -

**Shri Chansumai Basumatary** 

.....Accused Person

S/O Dilip Basumatary,

R/O Sonapur Gaon,

P.S. Gogamukh,

Dist.- Dhemaji.

30/11/2018

#### Appearance:

Shri A. Fogla,

**Public Prosecutor** 

.....For the State

Shri B. Gogoi, Advocate

.....For the Accused

Date of prosecution evidence

: 31-10-2018

**Date of argument** 

: 20-11-2018

**Date of Judgment** 

: 30-11-2018.

### JUDGMENT

- The prosecution case, in brief, is that on 08-06-2017 1. complainant- Smt. Ajanta Basumatary lodged an ejahar with Silapathar Police Station alleging interalia that about one year ago from the date of filing the ejahar on 08-06-2017, on several dates the accused committed sexual intercourse with her minor daughter-Smti 'X' (name is withheld) at different places by inducing her and with false promise of marriage. It is also alleged in the ejahar that the accused threatened her daughter not to disclose the fact of sexual intercourse to anybody else and in case of pregnancy arises due to sexual intercourse, he used to abort her pregnancy by administering tablets to her (victim). Further, it is alleged in the ejahar that the accused on 08-06-2017 called her daughter over phone to go to a lonely place in between Dimow and Dipa where the accused was waiting there with his Kwid car bearing Registration No.AS-22 -D/4870. As soon as she (victim) reached the place, the accused got-up her into the said vehicle and he forcibly tried to commit rape on her inside the vehicle. When she (victim) protested the accused quarreled with her and ultimately took her to their gate-way in the vehicle and kept her (victim) inside the vehicle by locking the door of the vehicle and he fled away.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Chansumai Basumatary u/s 4 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 313/376 of IPC R/W Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined four witnesses. At the closure of the prosecution evidence statement of the accused was recorded

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u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

### 4. Point for determination:

- (1) That, you before 8-6-2017 on different dates and places you caused **Smti 'X'** then being with child to miscarry without her consent, such miscarriage not being caused by you in good faith for the purpose of saving the life of the said victim 'X' and thereby you committed an offence punishable u/s 313 of IPC.
- (2) That, you before 8-6-2017 on different dates and places committed rape on Smti 'X' having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s 376 of IPC.
- (3) That, you before 8-6-2017 on different dates and places committed penetrative sexual assault on Smti 'X' and thereby you committed an offence punishable u/s 4 of POCSO Act.

PW1 the victim Smti 'X' stated that the complainant is her

5. I have gone through the evidence on record and heard arguments of both sides.

# Discussion, Decision and Reasons thereof

mother. She knows the accused. The incident took place about one year back. She had developed friendship with the accused and she used to meet him. She also used to go out in the vehicle with the accused. On the date of occurrence she went to Demow with the accused in his vehicle and the accused asked her to go to a certain place, but she refused. Then there was heated exchange of words between them. As she returned home late in the evening, her parents were angry with her. On being asked she told her parents that the accused took her to Demow. Then her mother lodged complaint before police. Police recorded her statement u/s 161 Cr.PC. Police

got her medically examined. She gave statement before Magistrate as tutored

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by her parents.

In her cross-examination PW1 stated that the accused was always friendly with the accused. He never abused her physically though they developed intimacy. On the date of occurrence differences arose between us regarding visiting a place. After filing of the case, she realized that she was unnecessarily harsh towards the accused. Now, they are maintaining cordial relation with the accused. Her parents and she decided not to proceed against the accused. She has further stated that she has no objection if the accused is acquitted in this case.

7. **PW2** Smti Ajanta Basumatary stated that she is the complainant. Victim is her Daughter. She knows the accused. The incident took place about one year back. Her daughter had developed friendship with the accused and she used to meet the accused. She also went to go out on vehicle with the accused and came home late. ON being asked she told that the accused had physically abused her. SO, she filed complaint before police. But, later on her daughter told them that she had voluntarily gone with the and the accused did not do any harm to her. So, they are not willing to proceed against the accused. Ext.1 is the ejahar and Ext.1(1) is her signature therein.

In her cross-examination PW2 stated that they are now maintaining cordial relation with the accused. She stated that she has no objection if the accused is acquitted in this case.

8. **PW3** Sinat Basumatary stated that complainant is his wife. Victim is his Daughter. He knows the accused. The incident took place about one year back. His daughter had developed friendship with the accused and she used to meet him (accused). She also went to go out on vehicle with the accused. On the date of occurrence she (victim) went to Demow with the accused and came home late. On being asked she told that the accused had physically abused her. SO, his wife filed complaint before police. But, later on

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In his cross-examination PW3 stated that they are now maintaining cordial relation with the accused. He has no objection if the accused is acquitted in this case.

9. **PW4** Danswarang Basumatary stated that the complainant is his mother. Victim is his sister. He knows the accused. The incident took place about one year back. His sister had developed friendship with the accused and she used to meet him. She also used to go out on vehicle with the accused. On the date of occurrence she went to Demow with the accused and came home late. On being asked she told that the accused had physically abused her. So, his mother filed complaint before police. But, later on his sister told them that she had voluntarily gone with the accused and he did not do any harm to her. So, they are not willing to proceed against the accused.

In her cross-examination PW4 stated that they are now maintaining cordial relation with the accused. He has no objection if the accused is acquitted in this case.

## **Appreciation of evidence:**

10. From the discussion of the evidence on record, it appears that in this case the victim-Smti 'X', her mother- Ajanta Basumatary (complainant), her father- Sinat Basumatary and her brother- Danswarang Basumatary were examined as P.W-1, PW2, PW3 and PW4 respectively. In their evidence all these vital witnesses stated that the victim girl had developed friendship with the accused and she used to meet him (accused). She (victim) also usedt to go out in the vehicle of the accused. On the date of occurrence she (victim) went to Demow with the accused and came home

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late. On being asked she told that the accused had physically abused her. So, mother of the victim, PW2 filed complaint before police. But, later on the victim (PW1) told them (PWs-2,3 and 4) that she had voluntarily gone with the accused and he (accused) did not do any harm to her. So, they are not willing to proceed against the accused. In cross-examination also, all the PWs have stated that they are now maintaining cordial relation with the accused. Further, all the P.Ws. have stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. It is also seen from the evidence of the PWs- 1 ,2 ,3 and 4 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused. I find that the prosecution has totally failed to prove the charges u/s 313/376 of IPC read with Sec.- 4 of the POCSO Act against the accused.
- 12. In view of the above, I find the accused-Chansumai Basumatary is not guilty u/s 313/376 of the I.P.C. read with Section-4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him.
- 13. Set him at liberty forthwith.
- Judgment is pronounced in open Court.
- 15. Given under my hand and seal of this Court on this the 30<sup>th</sup> day of November/2018.

Special Judge,