IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present :Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 34/2019 U/S 376-AB IPC R/W Section 4 of POCSO Act

State of Assam

-Vs-

Kandarpa Choudhury.....Accused.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. D.K. Boro, Learned Advocate.

Date of Evidence : 24-10-19.

Date of Argument: 03-12-2019.

Date of Judgment : 09-12-2019.

JUDGMENT

- 1. The prosecution case in brief, is that on 17-11-2018, at about 03 pm, the accused Kandarpa Choudhury committed rape upon the minor daughter of informant Basanta Kr. Kakati at her home taking advantage of absence of her father and other family members. Hence, on 23-11-18, the informant lodged an FIR with the Officer-in-Charge of Kalaigaon P.S.
- 2. On the basis of the FIR, Kalaigaon PS Case No. 132/18, under Section 448/376-AB IPC R/W Section 4 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section

376-AB IPC R/W Section 4 of POCSO Act against the accused Kandarpa Choudhury.

3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 376-AB IPC R/W Section 4 of POCSO Act, Hon'ble Special Judge, Udalguri framed charge there under and the ingredients of charges under Section 376-AB IPC R/W Section 4 of POCSO Act, were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. The learned Special Judge vide Order dated 03-12-19, transferred the case to this court for disposal.

4. The prosecution in order to prove its case examined the following 03(three) witnesses:

PW1- Basanta Kakati.

PW2- Victim-A.

PW3- Dr. Chandan Saha.

- The statement of the accused person had been recorded U/S 313 Cr.P.C.
 The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused committed rape on victim-A, a woman under 12 years?
 - (II) Whether the accused committed penetrative sexual assault upon the victim-A?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. D.K. Boro.
- 8. Learned defence counsel has submitted that the victim has not adduced any evidence implicating the accused she has not supported the prosecution story as emanated from the FIR. Hence, the prosecution has failed to prove the charge against the accused.
- 9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is Basanta Kakati, informant and father of the victim girl. In his evidence PW1 had deposed that on the day of occurrence which occurred in the month of November, 2018 his victim daughter was alone in house when he went out to attend a meeting. After returning from meeting his victim daughter told him that the accused who was a cultivator of his land had some arguments with her regarding the business of paddy. On this matter he lodged an FIR with the police against the accused. Accused only entered into an altercation with his daughter and he did nothing else to outrage her modesty. Ext.1 is the ejahar. Ext.1(1) is the signature of PW1. Crossexamination of PW1 had been declined by the defence.
- 11. PW2 is victim-A. In her evidence PW2 had deposed that since before the incident the accused used to do paddy cultivation in their land as an "Adhiar". On the day of occurrence, the accused came to their home when she was alone and started to argue with her regarding selling of paddy grown by the accused in our cultivation paddy field. Except this accused did not do anything to her. When her father returned from a meeting she narrated about the incident. Her father then lodged an FIR with the police. The accused did not misbehave with her except picking up a verbal

altercation on the issue of selling paddy. When the accused was arrested by police she was also brought before the Magistrate to give her statement recorded U/S 164 Cr.P.C. At that time one lady constable tutored her to state before the Magistrate for doing sexual assault on her by the accused though such incident had never taken place. Out of fear she stated before the Magistrate as tutored by the lady constable. Ext.2 is the statement. Ext.2(1) and 2(2) are the signatures. She was 10 years old now. In cross-examination, PW2 had stated that the accused did not sexually assault her. She stated in her statement before the Magistrate as tutored by the lady constable.

12. PW3 is Dr. Chandan Saha. In his evidence PW3 had deposed that on 23.11.18, he was serving as Sr. M. & H.O.1 at Udalguri Civil Hospital. On that day, he examined the victim girl in connection with Kalaigaon PS case No.132/18. The girl was escorted by WPC/459 Anjumani Devi. On examination, he found the following:-

Physical examination:-

Height- 127 cm, weight- 24 Kg, teeth- 24 Nos., axillary hair- not present, pubic hair- absent, breast- not developed, hymen- refused vaginal examination, vaginal injury-not examined, marks of violence not seen, clothing red frock.

Vaginal swab examination for spermatozoa:- not taken.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- Approximate age 11-12 years.

PW3 had deposed that in his opinion:

- (1) No evidence of recent sexual intercourse.
- (2) No obvious violence seen in private parts.
- (3) Vaginal examination not done as refused by the victim
- (4) Approximate age 11 to 12 years.

Ext.3 is the medical report and Ext.3(1) is the signature of PW3.

Cross-examination of PW3 had been declined by the defence.

- 13. PW4 is Nagar Ali Sarkar, Investigating Officer of this case. In his evidence PW4 had deposed that on 23.11.2018, he was posted as attached officer at Kalaigaon PS. On that day the informant lodged a written FIR with the O/C, Kalaigaon PS. On the basis of the FIR O/C registered a case vide Kalaigaon PS case No. 132/18 U/S 448/376AB IPC R/W Sec.4 of POCSO Act and endorsed PW4 for investigation into it. In course of investigation he sent the victim who was present in the PS for medical examination and then visited the place of occurrence, recorded the statement of the witnesses U/S 161 Cr.P.C., prepared a sketch map thereof. The statement of the victim got recorded before the Magistrate U/S 164 Cr.P.C. The accused was arrested and forwarded to the court. On completion of investigation PW4 laid the charge-sheet against the accused Kandarpa Choudhury U/S 376 AB IPC R/W 4 of POCSO Act. Ext.4 is the sketch map. Ext.4(1) is the signature of PW4. Ext.5 is the charge-sheet. Ext.5(1) is the signature of PW4. In crossexamination, PW4 had stated that the FIR was lodged on 23.11.2018 and the date of occurrence was 17.11.2018.
- 14. On appraisement of the evidence on record it is found that neither the victim girl nor her father, the informant, has adduced evidence implicating the accused persons in the allege offence of sexual assault. PW1, the informant and father of the victim girl had deposed that the accused who is a cultivator of his land had some arguments with his victim daughter regarding the business of paddy. According to him the accused only had an altercation with his daughter and he did nothing else to outrage the modesty of the victim girl. Corroborating the evidence of PW1; PW2, the victim girl had deposed that accused used to do paddy cultivation in their land as an "Adhiar". On the day of occurrence when she was alone at home, the accused came and started to argue with her regarding selling of paddy grown by the accused in their cultivation of paddy field. The accused did nothing to her, except picking up a verbal altercation on the issue of selling of paddy. Bothe PW1 and PW2 are vital and material witnesses of the prosecution. But they have not adduced evidence supporting the

6

prosecution case. Moreover, medical report(Ext.-3) reveals no sign of sexual

assault on the victim. PW3, the Medical Officer specifically stated that on

examination of the victim he found no evidence of recent sexual intercourse

or violence in private parts.

15. In view of above discussion it appears that the prosecution has failed to

prove the charges under Section 376-AB IPC R/W Section 4 of POCSO Act

against the accused beyond all reasonable doubt.

16. Situated thus the points for determination are decided in the negative and

against the prosecution.

<u>ORDER</u>

17. In the result, the accused Kandarpa Choudhury is found not guilty under

Sections 376-AB IPC R/W Section 4 of POCSO Act and acquitted of charges

under Sections 376-AB IPC R/W Section 4 of POCSO Act beyond all

reasonable doubt and set at liberty forthwith.

18. Bail bond executed by the accused and the surety shall remain in force for

another six months under the purview of provision under Section 437-A

Cr.P.C.

19. Judgment is signed, delivered and pronounced in the open court today the

09th day of December, 2019.

Dictated and Corrected

(N.Talukdar)

Addl. Sessions Judge

Udalguri

(N.Talukdar)

Addl. Sessions Judge

Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

Special (POCSO) 34/2019 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : FIR.

Ext.-2 : Statement of the victim U/S 164 Cr.P.C.

Ext.-3 : Medical report.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Basanta Kakati.

PW2- Victim-A.

PW3- Dr. Chandan Saha.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)
Addl. Sessions Judge.
Udalguri.