IN THE SPECIAL COURT :: SONITPUR, TEZPUR:: ASSAM

PRESENT:- N. AKHTAR, AJS

Addl. Sessions Judge, Sonitpur::Tezpur.

Special (POCSO) Case No. 01 of 2017.

U/s. 417 IPC, R/w Sec. 4/8 of

Protection of Children from Sexual Offences Act, 2012.

State of Assam

-Vs-

Sri Khaitu Kumar @ Dipak

FOR THE PROSECUTION :- Mr. S.K.Moitra, Special PP.

FOR THE DEFENCE :- Mrs. D. Sinha, Advocate.

EVIDENCE RECORDED ON :- 31.5.18, 31.7.18 and 6.3.2020.

ARGUMENTS HEARD ON :- 11.03.2020.

JUDGMENT DELIVERED ON :- 11.03.2020.

JUDGMENT

1. The case of the prosecution in brief is that the informant had been working in Delhi since last one year and the accused during that time, developed an illicit relationship with the sister of the informant and made her pregnant. When the informant returned his home, he got to know the entire facts and informed the villagers and the accused was also asked by the villagers and he admitted his guilt but refused to marry the sister of the informant. Hence, the FIR was lodged.

- Based on the FIR, a case was registered and after completion of investigation, police laid chargesheet against the accused U/s 376/417 IPC, read with Sec. 8 of the POCSO Act, 2012.
- 3. On appearance of the accused person, copies of relevant documents were furnished to him in compliance of the provision of Sec.207 CrPC. Having heard both the sides and considered the materials on record, formal charges were framed against the accused u/s 417 IPC R/w Sec. 4/8 of the POCSO Act, 2012 and had been read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial, the prosecution has examined as many as 5 (Five) witnesses. Defence has not examined any witness. At the end of the trial, the argument advanced by the learned counsel for both the sides were heard at length.

POINT FOR DETERMINATION

- ➤ Whether the accused on the alleged day of occurrence, cheated the sister of the informant by making her pregnant and refusing to marry her later and thereby committed an offence U/s 417 IPC?
- ➤ Whether the accused person on the alleged day, committed penetrative sexual assault and also sexual assault on her and thereby committed offences U/s 4/8 of the POCSO Act, 2012?

DISCUSSIONS, DECISIONS AND REASON FOR DECISION

- 5. I have heard the arguments advanced by learned counsel for both the sides and also gone through the evidence on record including the law relevant to the issue in hand.
- 6. PW1 (Sri Dhaneswar @ Thaneswar), PW2 (Paniram Gaur), PW3 (Pradip Kumar), PW4 (Dr. Amarjit Kaur) and PW5 (Gokul Sonowal) are the witnesses examined in this case. PW4 is the medical officer and PW5 is

the investigating officer of this case. It is pertinent to mention here that the informant and the alleged victim girl could not be examined in this case as their attendance could not be secured by the prosecution despite repeated attempts which is clear from the materials on record. It is again important to point out here that it is not necessary in a criminal trial that a particular witness has to be examined to prove a criminal case. No particular number of witnesses need also be examined. What is important to see is whether the evidence adduced in a criminal trial is sufficient to bring home the guilt of the accused.

- 7. Now in the present case, it would be seen that PW1 being a villager had stated that the complainant filed a case against the accused on an allegation that the accused had made her sister pregnant. A village meeting was held and the villagers asked the accused to keep the victim but the accused refused to do so. This witness was declared hostile but nothing has been elicited from his mouth to support the case of the prosecution. It is also not clear from his evidence that he had any personal knowledge that the accused made the sister of the informant pregnant.
- 8. PW2 has not stated anything supporting the prosecution case. He had only stated that he did not know anything about the occurrence. He was also declared hostile but nothing significant could be elicited from him. PW3 had deposed that the informant filed a case against the accused on account of some "Gondogul" (anomalies) relating to a marriage. The alleged victim got pregnant and villagers asked the accused to marry her but he refused. In his cross-examination, PW3 had however, clearly deposed that he did not know who caused pregnancy of the victim. Thus, from his evidence also, nothing has come out to show the complicity of the accused in the commission of the alleged offence. PW4 is the medical officer who examined the alleged victim girl but could not give any opinion about any fact as

there was no document produced before her. PW4 also could not give any opinion as to whether the alleged victim girl was pregnant. PW5 is the investigating officer who conducted the investigation of the case. He visited the PO, prepared sketch map, recorded the statement of the witnesses and sent the alleged victim girl for medical examination who refused the medical examination. Age certificate of the victim girl was tried to be collected but no such certificate was handed over to him. PW5 had further deposed that during continuation of the investigation, the entire family of the victim girl had shifted to a different place and it was heard that they had shifted to Chennai but no address could be ascertained.

- 9. Except the above, there is no any other evidence on record. Thus, it appears that there is no cogent evidence on record to show the age of the alleged victim girl. There is also no medical evidence on record to show that the alleged victim girl was pregnant and also that she was pregnant from the accused. The alleged victim girl and the informant could not be examined in this case as their address/present whereabouts could not be located as they shifted to Chennai and the address was also unknown. The witnesses examined in the case also did not state anything from which it can be inferred that they had any personal knowledge about the occurrence. It thus, appears that there is no sufficient evidence on record to bring home the guilt of the accused.
- 10. Thus, from the aforesaid evidence on record, no conclusion regarding the guilt of the accused can be arrived at. Thus, the case of the prosecution is bound to fail because of absolutely deficient evidence. The accused is hence, not found guilty of any offence as charged and as such, acquitted of the charge and set at liberty forthwith.
- 11. Forward a copy of this judgment to the District Magistrate in compliance of Sec. 365 CrPC.

Given under my hand and seal of this court on the 11th day of March/2020.

Typed and Corrected by me:

Addl. Sessions Judge, Sonitpur:: Tezpur.

APPENDIX

PROSECUTION WITNESSES:

PW1 (Dhaneswar @ Thaneswar Kumar)

PW2 (Paniram Gour)

PW3 (Pradip Kumar)

PW4 (Dr. Amarjit Kaur)

PW5 (Gokul Sonowal)

PROSECUTION EXHIBITS:

Ext-1: Advice Slip.

Ext-2: Requisition letter.

Ext-3: Sketch Map.

Ext-4: Chargesheet.

DEFENCE WITNESSES:

NIL.

DEFENCE EXHIBITS:

NIL.

Addl. Sessions Judge, Sonitpur:: Tezpur.