IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon Smti. B. Kshetry Present: Special Judge, Kamrup, Amingaon Special Sessions (POCSO) case No.03/2017 U/S- 4 of the POCSO Act, 2012 State of Assam -Versus-Md. Abdul Alim s/o-Md. Escar Ali resident of vill -Pub Kalyanpur P.S.-Nagarbera Dist.-Kamrup -----Accused Appearance: Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State A. B. Aconda, Ld. Advocate -----for the accused Date of evidence: 05.05.2018, 14.06.2018, 29.09.2018,

15.12.2018, 30.04.2019, 03.06.2019, 01.08.2019, 16.08.2019,

Date of Argument: 15.10.2019

03.09.2019,

Date of Judgment: 25.10.2019

JUDGMENT

- 1. The Prosecution case in brief is that—the complainant—Shahanaj Begum lodged an ejahar stating that about 8/9 months prior to lodging of the ejahar, accused—Abdul Alim by giving assurance of marrying her had physical relationship with her several times. But no marriage had taken place between them. Hence, this case.
- 2. On the basis of the said ejahar, Nagarbera P.S Case No. 127/2016 U/S-4/8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-4/8 of the POCSO Act, 2012.
- 3. The case was duly committed and the Court after hearing both the parties, framed charge U/S- 4 of the POCSO Act, 2012 against accused—Abdul Alim. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as eight (8) numbers of witnesses including the I/O and M/O. Statement of the accused person U/S-313 Cr. P.C has been recorded. He has denied committing the offence and declined to adduce evidence.

5. **POINT FOR DETERMINATION:**

(I) Whether the accused person about 8/9 months prior to lodging of the ejahar committed penetrative sexual assault upon the informant, and thereby committed an offence punishable U/S 4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. In this instant case, the accused is charged U/S-4 of POCSO Act. Before discussing the evidences on record, let us go through the definition of penetrative sexual assault which is defined in Section 3 of the POCSO Act, 2012.
- 7. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
 - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section 4 of the POCSO Act deals with punishment for penetrative sexual assault. It reads as — " Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and

shall also be liable to fine."Let us go through the evidence on record to find out if the prosecution has succeeded to prove the case.

- 8. Now, coming to the evidences on record.
- 9. P.W.1, prosecutrix is the informant/victim of this case. She stated that she was 13 years old at the time of incident and was reading in class-VII. She has deposed in her evidence that she knows the accused, who used to visit their house and had some relation with her 8 months prior to the incident. P.W.1 stated that on the date of the incident, her parents were not at home. P.W.1 further stated that the accused used to come to her house at some intervals and he used to have sexual intercourse with her. After 8 months of such incident, the accused told her that he is going to marry another girl. Thereafter, P.W.1 informed the incident to her mother. Her mother, accordingly informed the incident to her father and the matter was also informed to the village Headman, who discussed the matter with the family members of the accused. But the accused disagreed to marry her. Thereafter, the informant lodged the ejahar on 19.08.2016. Police came and sent her for medical examination and brought her before the Magistrate for recording her statement. Police also recorded her statement. Ext.1 is the ejahar. Ext. 1 (2) is her signature, Ext. 2 is the printed form of FIR and Ext. 2 (1) is her signature, Ext.3 is the medical report, Ext. 3 (1-2) are her signatures, Ext.4 is the statement recorded by Magistrate, Ext. 4 (1-2) are her signatures.

In her cross-examination, P.W.1 stated that she has not submitted any document regarding her age. She stated that the relation between the accused and her started in the month of January, 2015 and thereby, she stated before the court that after 8 months of such incident, the accused told her that he is going to marry another girl. P.W.1 disclosed that the accused did not come to meet her and he stopped visiting her since 15 days before lodging of the FIR. She stated that she was persuaded by the accused by

giving a promise to marry her. P.W.1 disclosed that she lodged the case as the accused refused to marry her but if he had married her, then she would not have filed the case. P.W.1 has five family members including her in her house. And on the day of the incident she was alone in her house. Her father returned home from market at around 7 p.m and her mother had returned home on the following day. P.W.1 disclosed that she did not cry or oppose the act of the accused as he promised to marry her.

10. P.W.2, Surman Ali, is the father of the informant/victim. He knows the accused person, who is the their neighbour. He deposed that the incident took place about 3 years ago. He deposed that at the time of occurrence, he was in the market. Victim (P.W.1) was alone in the house on that day. She was 13 years old at the time of occurrence. P.W.2 stated that his wife also not at home on that day. She had gone to Dhupdhara for NRC works. P.W.2 returned from the market at 7.00 p.m. After 3 days, when his wife returned back, victim told her the incident. Thereafter, his wife—Kasumati Begum told him that the accused had forcible sexual intercourse with the victim in their house. P.W.2 further stated that on the date of occurrence in the evening time, the accused came to their house when the victim was alone and enquired about them. When the accused came to know that the parents of the victim were not in the house, then he forcibly committed rape upon her. On coming to know about the incident, P.W.2 informed the village people— Ekabbar Munchi and Jorup Ali, who were the President and Secretary of Mazjid committee. They went to the house of the accused person to enquire about the incident but the accused was not found there. Then, P.W.1 lodged the ejahar against the accused. Police enquired about the incident from him.

In his cross-examination, P.W.2 disclosed that he did not know the exact date of occurrence. He used to go to Mirza for work. P.W.2 did not tell the police that he returned home from work at 7.00 p.m on the date of occurrence and that his wife returned from Dhupdhara after 2 days from the date of occurrence and that the victim told the incident to her mother (his

wife) and then she (his wife) told him. P.W.2 did not remember if he told before the police that his wife told him that accused committed forcible sexual intercourse with the victim. P.W.2 further stated that at the time of occurrence, the marriage of the accused was fixed with another girl.

11. P.W.3, Musstt. Kasumati Begum, is the mother of informant/victim. She deposed that the incident took place about 2/3 years ago. At the time of occurrence, she had gone to her parental home at Aambari, Dhupdhara for NRC works. She returned home after 2 days of occurrence. Victim was alone in house on that day. She was 13 years old at the time of occurrence. On her return, informant told her that in the evening of the date of occurrence, the accused came to their house when the victim was alone and the accused had forcible sexual intercourse with her in their house. And on coming to know about the incident, she informed her husband about the incident. Then P.W.2 called the village people—Ekabbar Munchi and Jorup Ali, who were the President and Secretary of the Mazjid committee and told them about the incident. They went to the house of the accused person to enquire about the incident but the accused was not found there. Then, they decided to lodge the ejahar against the accused. Police recorded her statement and took the victim for her medical examination and also brought her before the Magistrate for recording her statement.

In her cross-examination, P.W.3 disclosed that she did not remember if she told the police that her daughter (victim) told her that the accused came to their house when she was alone and had forcible sexual intercourse with her in their house. She denied all the suggestions put to her by the defence side.

12. P.W.4, Md. Osman Ali know both the parties. He deposed that the incident took place about more than a year ago. He deposed that the informant/ victim was 14 years old at the time of occurrence. On the relevant day, when P.W.4 went for 'Namaz' to the Masjid, then the father of the victim called him to his house at 8.00 p.m. There he found the victim and her

mother also. Then in front of them, victim told him that the accused—Abdul Alim entered inside their house in the evening time, when she was alone and he forcibly raped her. Thereafter, P.W.4 and the father of the victim (P.W.2) went to the house of the accused to enquire about the incident. But they met the father of the accused, who told then that the accused was not in the home. Thereafter, victim lodged the ejahar. Police came to the house of the victim and also visited the house of the accused. Police recorded his statement in the house of the accused. The accused was hiding in the house of his brother-in-law, Sontali. P.W.4 informed the police regarding his hide out. Thereafter, police arrested the accused and brought him to the police station.

In his cross-examination, P.W.4 disclosed that victim is his niece. His house is situated in the distance of 1 ½ km away from the house of the victim. In the afternoon, on the date of occurrence, he had visited the house of the victim. He found the victim alone in her home and she told him that her parents had gone to the house of her maternal grandparents in village Aambari, which is 7 kms away from her house. They returned home in the evening time just after sunsent and he saw them on the day of alleged incident. The father of the accused was also in 'Namaz' with him. P.W.4 stated that the victim's father called him only to his house but not the father of the accused. He further deposed that he did not know if victim's father had borrowed Rs.15,000/- from the accused.

13. P.W.5, Md. Akkal Ali knows both the parties. He deposed that the incident took place about three years ago. At the time of incident, informant/victim was 13 years old and was a school going student. He further deposed that on the relevant day, when he returned home from Vidyanagar market, he heard the victim crying. Then, he went to her house. On enquiry, victim and her mother told him that the accused—Abdul Ali came to their house, when the victim was alone and he raped her. After hearing this, p.W.5 advised the victim's mother to inform the matter to the village elders. But no village meeting took place. Thereafter, the ejahar was lodged.

In his cross-examination, P.W.5 disclosed that he met the victim along with her parents when he went to their house on hearing her cries at about 7/7.30 p.m. he disclosed that the incident occurred on that very day in the evening time. It occurred about 2 / 2 ½ hours before he visited to their house. There are 5 family members of the victim. Victim has one elder brother—Keramat Ali.

14. P.W.6, Dr. Renuka Rangpharpi is the M/O of this case. She deposed that on 20.08.2016 she was working as Assistant Professor, Department of Forensic Medicine at GMCH. On that day, at around 1.20 p.m, she examined one Shehnaj Begum, female, 13 years of age brought in reference with Nagarbera P.S case No. 127/16 U/S-4/8 of POCSO Act, 2012. She was accompanied and identified by WPC, 609, Dharitri Das. The victim alleged that the accused—Abdul Ali committed forceful sexual intercourse since 9 months gave assurance to marry her.

On the physical examination of the victim found---

Her height—144 cm, weight—38 kg, chest girth—, abdominal girth—, total 28 teeth were present and all were permanent. She had not adequate space for teeth. Scalp hair- 40-42 cm in length. Axillary hair- Nil and pubic hair-0.5-1 cm was black, non-melted and average in distributed. Her breast-Pendulous in shape, firm in consistency. Nipples and areola enlarged and dark colour. Milk came out on squeezing both breast. Menarche- class VI, Cycle- Regular, duration 3 days, Last Menstrual Period-One month back.

On genital examination:-

Genital organs—Well developed, vulva—labia majorapartially separated and exposing labia minora on abduction of thighs, Hymen —Currunculae myrtiformis, vagina—rugosed present, Cervix—blood stain discharged present, Uterus—per abdomen not palpable, evidence of venereal disease — not detected at the time of examination, vaginal swabs collected from — from

around the cervix and posterior fornix of vagina , injury on the body—not detected at the time of examination, her mental condition at the time of examination—Normal, behavior—Co-operative and average, gait—Normal

<u>Laboratory investigation:-</u>

Vaginal smears shows presence of spermatozoa under microscopic examination.

<u>Opinion:-</u> On the basis of physical examination, radiological and laboratory investigations done, P.W.6 opined that:-

- 1. Evidence of recent sexual intercourse detected on her person.
- 2. Her age is above 14 years and below 16 years of age.

Ext.3 is the medical report. Ext. 3 (3 to 5) are her signatures.

In her cross-examination, P.W.6 disclosed that the age of the victim is mentioned by relying on the radiological report and on physical examination of the victim. P.W.6 has not annexed the x-ray report of the victim along with the medical report. As per medical jurisprudence the age of any person cannot be said to be above 16 years if there is epiphysis of elbow joint. The time required for fused shoulder joint depends upon nutrition. P.W.6 has not done any X-ray to determine the existence of 3rd molar. P.W.6 do not know the age of the 2nd molar. The 'recent' meaning, any incident occurred in 24 hours. After Microscopic examination of the victim, P.W.6 found presence of vaginal smears spermatozoa. As per medical jurisprudence the age of victim varies by 2 years.

15. P.W.7, S/I, Ramesh Sarmah, is the I/O of this case, who has investigated the case. In his deposition, he has stated that on 19.08.2016, he was working as Second Officer at Nagarbera P.S. On that day the informant—Shahanaj Begum lodged an ejahar in Nagarbera P.S. Thereafter O/C, Nagarbera P.S registered a case bearing Nagarbera P.S Case

No.127/2016 U/S-4/ 8 of POCSO Act, 2012 and directed him to investigate the case. Accordingly, P.W.6 visited the place of occurrence along with the staffs on that very day. He recorded the statements of the witnesses including the informant and the victim. Victim was examined in his non-official dress. P.W.7 prepared the sketch map. P.W.7 did not find the accused—Abdul Alim on search as he fled away. The victim was 13 years old. P.W.7 sent the victim to GMCH for her medical examination and sent her to the court for recording her statement U/S-164 Cr.P.C. On 20.08.2016, P.W.7 arrested the accused—Abdul Alim from Kalyanpur Bazaar and forwarded him to the Court. P.W.7 collected the medical report of the victim. Thereafter, he completed the investigation and on finding sufficient evidence against the accused person, P.W.7 submitted the charge-sheet against him U/S-4/8 of POCSO Act. Ext.4 is the sketch-map and Ext.4 (1) is his signature. Ext.5 is the charge-sheet and Ext.5 (1) is his signature.

In his cross-examination, P.W.7 disclosed that the specific date of the incident is not mentioned in the FIR. P.W.1 did not tell him the exact date of occurrence.P.W.1 also did not state before him specifically that on the date of incident her mother had gone to her grandmother's house at Ambari and her father had gone to 'Bazaar'. She did not tell him that her mother returned on the following day. There are no houses nearby the house of P.W.1. P.W.2 stated before him that his wife had gone to Hajo and he had returned from paddy field. P.W.2 did not tell him that his wife told him about the incident. P.W.2 stated before him that his wife and his daughter (victim) had gone to Aunt's place at Hajo. P.W.2 did not state before P.W.7 that he returned home at 7.00 p.m. P.W.3 did not tell him as to where she was at the time of the incident. P.W.3 told before him that the marriage of the accused was fixed with another girl and on coming to know about it, P.W.3 visited the house of the accused and pressurized him to marry his daughter (victim) and that the parents of the accused refused to the proposal and thereafter, they filed the case. P.W.4 did not tell P.W.7 that on the relevant day, when he went for 'Namaz' to the Masjid, then the father of the prosecutrix called him to his house at 8.00 p.m and there he found the prosecutrix and her mother also. Then in front of them, prosecutrix told them that when she was alone the accused entered inside their house in the evening time when she was alone and he forcibly raped her. P.W.4 told P.W.7 that on the relevant day when the prosecutrix came to know that the accused is going to get married another girl, then she told her parents about the incident and her parents informed her village elders about the incident.

16. P.W.8, Md. Habi Uddin Ahmed knows the informant/victim of this case and the accused person. P.W.8 stated that the incident took place about three years ago. Victim was 13 years old at the time of occurrence. She was a school going student and was studying in class-VII. He was the VDP Secretary of village—Kalyanpur. There was a talk of marriage of the accused with another girl and the marriage date was also fixed. About 2 days prior to the talk of marriage of the accused with another girl, the parents of the victim came to his house and they told him that they have come to know from their daughter (victim) that there was some relationship between her and the accused and they had decided to get married also. P.W.8 advised them to resolve the matter by holding a village meeting. But the informant went away from his house and lodged the ejahar. There was friendship between the victim's father and the father of the accused. Later, P.W.8 heard from the father of the accused that victim's father had borrowed Rs.15,000/- from the father of the accused and the accused visited the house of the victim for getting the money returned as the same was required for his marriage. But victim's father did not return the money. Police recorded his statement.

In his cross-examination, P.W.8 disclosed that Victim's parents told him that there was love affair between the accused and the victim but they did not tell him that the accused did any bad act with her.

- 17. Perused the evidences on record. Heard the Learned Counsels for both sides. Learned Counsel for the accused submitted that the accused has been falsely implicated in the case. He further argued that the victim's father gave a proposal to the father of the accused to get the accused married to the victim but as the victim was minor, the father of the accused refused such proposal. It is further pointed out by the learned Counsel for the accused that there are major contradictions in the evidences of the P.Ws for which the sole version of the victim (P.W.1) cannot be relied upon. His further submission is that the I/O (P.W.7) also confirmed the contradictions in the evidences of the P.Ws.
- 18. Now, coming to the evidence of the victim (P.W.1), it is her version that she was alone in the house on the date of occurrence. Her cross-examination reveals that her father returned home from the market at 7.00 p.m on the day of occurrence and her mother returned home on the following day and she told her the incident. It is in the evidence of P.W.2 (victim's father) that his wife (P.W.3) had gone to Dhupdhara for NRC works on the date of occurrence and after 3 days, when she returned back, victim told her the incident. Again, P.W.3 (victim's mother) gave the version that at the time of occurrence, victim was alone in the house, while she had gone to her parental home at Aambari, Dhupdhara for NRC works and she returned home after 2 days of the occurrence and on her return, victim (P.W.1) told her that the accused came to their house when she was alone and had forcible sexual intercourse with her.
- 19. Now, witness, P.W.4 gave the evidence that on the date of occurrence at 8 p.m, he met the victim (P.W.1) and her mother in their house and P.W.1 told him that the accused came to their house when she was alone and he forcibly raped her. This witness confirmed in his cross-examination that the parents of the victim (P.W.1) returned home in the evening time on the date of occurrence and he saw them. Another witness, P.W.5 testified that on the day of occurrence, upon hearing the cries of P.W.1 (victim) at 7/7.30 p.m he

went to her house, and on enquiry P.W.1 and her mother (P.W.3) told him that the accused came to their house, when P.W.1 was alone and he raped her. Furthermore, P.W.8 revealed that the victim's parents told him there was love affair between the accused and the victim but they did not tell him that the accused did any bad act with her. It has come out from his evidence that the victim's father had borrowed Rs.15,000/- from the father of the accused and when the accused visited the victim's house for getting back the money, the victim's father did not return the same. So, there is major contradictions in the evidences of P.W.1 and other witnesses as regards the plea of the victim (P.W.1) that she was alone in the house at the time of occurrence.

- 20. Coming to the evidence of the I/O (P.W.7), it is found that the I/O has confirmed that P.W.1 did not tell him the exact date of occurrence.P.W.1 also did not state before him specifically that on the date of incident her mother had gone to her grandmother's house at Ambari and her father had gone to 'Bazaar'. She did not tell him that her mother returned on the following day. P.W.2 stated before him that his wife had gone to Hajo and he had returned from paddy field. P.W.2 stated before him that his wife and his daughter (victim) had gone to Aunt's place at Hajo. P.W.3 told before him that the marriage of the accused was fixed with another girl and on coming to know about it, P.W.3 visited the house of the accused and pressurized him to marry his daughter (victim) and that the parents of the accused refused to the proposal and thereafter, they filed the case. P.W.4 told P.W.7 that on the relevant day when the prosecutrix came to know that the accused is going to get married another girl, then she told her parents about the incident and her parents informed her village elders about the incident.
- 21. It is pointed out by the learned Defence Counsel that M.O (P.W.6) on examining P.W.1 (victim) found evidence of recent sexual intercourse on her person while in her cross examination P.W.1 has revealed clearly in her cross-examination that the accused stopped visiting her since 15 days before lodging the FIR. Perused the medical certificate (Ext.3). Victim was examined

on 30.08.2016. Ejahar was lodged on 19.08.2016. So, the allegation of the victim that the accused used to come to her house at some intervals and he used to have sexual intercourse with her cannot be believed at all.

- 22. Keeping in view the evidences on the record, I find that the offence U/S-4 of the POCSO Act is not at all attracted against the accused person. He is entitled to get the benefit of doubt.
- 23. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Abdul Alim. He is held not guilty. He is acquitted of the offence U/S- 4of the POCSO Act, 2012 and set at liberty forthwith.
- 24. His bail bonds shall remain in force for next 6 (six) months U/S-437 (A) Cr. P.C.
- 25. The case is disposed of on contest.
- 26. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 25th day of October, 2019.

Special Judge, Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, prosecutrix

P.W.2, Surman Ali

P.W.3, Musstt. Kasumati Begum

P.W.4, Md. Osman Ali

P.W.5, Md. Akkal Ali

P.W.6, Dr. Renuka Rangpharpi

P.W.7, S/I, Ramesh Sarmah

P.W.8, Md. Habi Uddin Ahmed

Prosecution Exhibit

Ext.1 is the ejahar

Ext. 2 is the printed form of FIR

Ext.3 is the medical report

Ext.4 is the statement recorded by Magistrate

Ext.4 is the sketch-map

Ext.5 is the charge-sheet

Special Judge, Kamrup, Amingaon