IN THE COURT OF SPECIAL JUDGE NAGAON.

Present- A. Rahman, LL.M, AJS

Special (POCSO) case No- 63(N) / 2018.

U/S- 6 of the POCSO Act.

Parties -

-----State -----

-Vs-

Jahirul Islam

S/O- Nu Islam (gaon burah)

Village- No-2 Kandulimari.

PS- Dhing.

Charge framed on – 6-8-2018.

Evidence recorded on - 15-11-2018, 11-1-2019.

Argument heard on - 11-1-2019.

Judgment delivered on – 11-1-2019.

Appearance -

For the prosecution- Mr. M.J. Neog , learned special prosecutor.

For the defence - Mr. H. Kabir, learned Advocate.

JUDGMENT

This case arose out of Dhing PS case No-155/2018 registered under section -6 of the POCSO Act.

The story of the prosecution case , in brief is that complainant , Kamala (actual name withheld) village No-2 Kandulimari , on 18-4-2018 lodged a written ejeahr with the officer –in charge of Dhing police station alleging that on 11-4-2018 , during the day time , while she went out of her house for attending NRC hearing, accused Jahirul taking advantage of her absence and the fact that her husband is a physically and mentally

challenged person, committed rape on her fifteen years- old daughter (Miss X) after threatening her with dire consequence. Her neighbours having witnessed the occurrence disclosed it to her soon after she returned home. When she asked her victim daughter, she stated her the entire occurrence in details and also stated that the accused had criminally intimidated her if she disclosed the occurrence to others.

Acting upon the said ejehar from the complainant, the officer in charge of Dhing police station registered the aforementioned case and put the criminal investigation in to motion.

During the investigation, police visited the place of occurrence, recorded the statement of the witnesses including the victim child. She was also produced before the learned Magistrate for recording her statement U/S-164 crpc. Her medical examination was also done.

The accused was arrested and forwarded to the court with a prayer for sending him to judicial custody.

At the conclusion of investigation, police officer collected medical examinations report of the victim girl and laid charge sheet against the accused U/S-6 of the POCSO Act.

The record of the case was transferred by Hon'ble Sessions Judge on 31-7-2018 to this court for trial.

Upon production of the accused before this court, both sides were heard. After considering the materials on record, charge U/S-5 of the POCSO Act was framed against him.

The charge was then read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

During the camera trial, complainant and the victim child were examined as PW-1 and PW-2 respectively. Scrutinising the evidence of the PW-2 who is the star witness of the prosecution, examination of further prosecution was closed.

The accused was examined U/S-313CRPC. The defence plea is of total denial of the prosecution allegation. He has pleaded in view of land dispute, the case was lodged against him. The defence led no evidence.

I have heard argument submitted by Mr. M.J. Neog , learned special prosecutor and Mr. H. Kabir learned counsel for the defence.

Now the point for determination is as follows-

Whether the accused , on 11-4-2018 and prior to , committed penetrative sexual assault upon victim "PW-2" and as such liable to punished U/S-4 of the POCSO Act?

DISCUSSION & DECISION WITH REASONS THEREOF:

Complainant Kamala was examined as PW-1. Prosecutrix Miss-"X", was examined as PW-2.

It is clear from the FIR that PW-1 is the reported witness. She heard the occurrence form her neighbours as well as from her daughter-PW-2.

Now let us see the relevant portions of evidence of the said two witnesses.

The evidence of PW-1 was recorded on 15th November 2018. She has deposed that about seven/eight months back, on the relevant day of occurrence, she went out for attending NRC(National Register of Citizens updating process) hearing and her husband who is deaf and dumb was also not at home. Her daughter PW-2 was alone at her house. As soon as she returned home, her neighbour Mojila stated to her that Jahirul (accused) had visited her house in her absence. Then she asked her daughter PW-2 regarding the matter, she initially hesitate to disclose but subsequently stated Jahirul had come and spending a few minutes, he went away.

PW-1 further stated that after a few days, she lodged the case which police registered. That Father of accused Jahirul is the village head-man who asked her that the case should be withdrawn as they being neighbour would have to live peacefully. That police during investigation, got examined her daughter medically. She was also produced before the Magistrate for recording her statement.

During cross examination, she replied that accused Jahirul used to visit her house prior to the occurrence. PW-1 also stated on being asked whether Jahirul had done bad work with her, PW-2 stated in the negative.

PW-2 being the prosecutrix is the star-witness of the prosecution. Her evidence was recorded in camera on 11th Day of January 2019.

She has testified that about 9th months back , on the relevant day , her mother PW-1 went to attend NRC hearing at Dhing. Her father went out for work and her brother and sister went to school. She was alone at the house. That accused Jahirul , came to their house and rebuked her telling that she would have to leave the land. He also wanted to assault her for which she raised cry. Hearing her cry , neighbours came and he fled away. She has confirmed that Ext-1 is her statement before the Magistrate but she gave her statement as instructed by police. After the incidence, there was a village sitting where Nurul Islam, being the father as well as Gaonburah (village head-man) was present. She has clearly stated at the relevant time, she was crying as such her mother (PW-1) lodged ejehar suspecting that the accused might do bad work with her.

In her cross examination, she has clearly and candidly stated that the accused did not do bad work with her.

PW-2 being the prosecutrix does not support the prosecution allegations as mentioned in the FIR. PW-2 has proved Ext-1 is her statement recorded U/S-164crpc but stated it was made as per instruction of police. Statement U/S-164CRPC is not a substantive piece of evidence but it may be used for corroboration or contradiction. In this case , PW-2 who is 15 years instead of supporting the veracity of her Ext-1 contradicts stating the same to be made under police instruction. From a bare perusal of Ext-1 , it appears that PW-2 stated before the Magistrate that the accused committed bad work (sexual intercourse) with her after finding her alone at the house. Thereafter, he threatened her not to disclose to other he would kill her. While deposing before the court, she has contradicted and deviated from her said statement. So , Ext-1 would not prove the charge against the accused.

Medical examination report shows that doctor at the time of examination of PW-2 did not find any sign of recent sexual intercourse or injury on her private parts.

It is proved from the evidence of PW-1 & PW-2 , Nurul Islam being the village head-man as well as father of the accused has sufficient influence in the village. It can be well presumed that he has influenced them not to depose against his accused-son. Therefore, even if the accused was detained in jail custody since the time of investigation but the said two vital witnesses have been won over by his influential father. Unless , the child victim speaks the basic allegation against the accused , the statutory presumption against the accused can not be drawn that he has committed the crime.

In view of the above discussions and observations, this court finds that the prosecution has failed to prove the charge against the accused beyond reasonable doubt.

Accordingly, the accused stands acquitted on benefit of doubt. He shall be set at liberty, if not wanted in any other case. Inform superintendent of jail Nagaon for compliance.

Judgment is declared and delivered in the open court singed by me under the seal of this court this 11th Day of January 2019.

(A Rahman, AJS)
Special Judge ,

Nagaon.

Judgment prepared & corrected by me.

(A. Rahman, AJS)

Special Judge , Nagaon.

-APPENDIX-

Prosecution witness-

- 1. PW-1 Kamala.
- 2. PW-2 Victim Girl

Exhibits-

1. Ext-1 Statement recorded U/S-164crpc

Defence witness-

NIL

Defence Exhibits-

NIL

(A. Rahman, AJS)

Additional Sessions Judge, No-1 Nagaon.