Present :- Shri J. Borah, AJS Special Judge, Dhubri.

SPECIAL CASE NO.90 OF 2018

U/s.376 I.P.C

R/W Sec.4 of Protection of Children from Sexual Offences Act

State of Assam Vs Rofiqul Bepari

....Accused Person.

Date of Framing Charge :- 11-10-2018

Dates of Recording Evidence: -03-11-2018

17-11-2018

Date of Argument :- 27-11-2018

Date of Judgment :- 27-11-2018

Advocates Appeared:

For the State of Assam :- Shri S.C. Roy

Learned Addl.P.P.

For the Defence :- Shri Y.A. Bepari

Learned Advocate.

J U D G M E N T

- 1. This case is U/s.376 I.P.C read with Sec.4 of Protection of Children from Sexual Offences Act, so, the name of the victim is not mentioned here and she is hereinafter referred to as 'X'.
- 2. The prosecution case, in brief, is that Aynal Bepari, the informant lodged an ejahar with Golakganj Police Station on 22.1.018 informing that 'X' is a minor, aged about 15 years old. She is a student of Class-IX. The accused Rofiqul Bepari was tutorial teacher of the informant's daughter. The accused Rofiqul Bepari allured 'X' to marry. The said accused Rofiqul Bepari took 'X' to his house and committed rape on her. On 5.1.018 at about

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3-00 P.M, the accused Rofiqul Bepari took 'X' to his house. At such, the other accused Sekendar Bepari, Azizur Bepari, Anisur Bepari, Saifur Bepari and Hafizur Bepari rebuked 'X' using obscene words and ousted her from their house.

So, the informant prayed for taking necessary action against the said accused persons.

- 3. The Golakganj Police Station received the ejahar and registered vide Golakganj Police Station Case No.62/018 U/s.376 I.P.C. R/W Sec.4 of Protection of Children from Sexual Offences Act, hereinafter referred to 'POCSO'. The case was investigated and having found prima facie U/s.376 I.P.C R/W Sec.4 of POCSO Act against the accused Rofiqul Bepari laid the chargesheet before the court for trial.
- 4. The accused Rofiqul Bepari appeared in the court of Special Judge, Dhubri. The Hon'ble Special Judge transferred the case to this court for trial.
- 5. The accused Rofiqul Bepari, hereinafter called the accused person, appeared in this case. He was furnished copy. Charge was framed U/s.376 I.P.C and also U/s.4 of POCSO Act against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. The prosecution, in order to bring home the charge against the accused, examined 5 (five) witnesses, namely --
 - 1. X/the victim PW-1
 - 2. Aynal Bepari PW-2
 - 3. Nuruddin Ahmed PW-3
 - 4. Diljan Bibi PW-4
 - 5. Sahinur Bibi PW-5
- 7. Since there found no incriminating evidence adduced by the prosecution witnesses against the accused, so he is not examined U/s.313 Cr.P.C.

8. Heard argument for both sides.

9. POINTS FOR DETERMINATION

- (i) Whether the accused on 5.1.018 at about 3-00 in the afternoon at village Biskhowa Part-II under Golakganj Police Station committed rape on the minor daughter of informant 'X' and thereby committed offence U/s.376 I.P.C.
- (ii) Whether the accused on 5.1.018 at about 3-00 in the afternoon at village Biskhowa Part-II under Golakganj Police Station committed penetrative sexual assault on the minor daughter of informant 'X' and thereby committed offence U/s.4 of POCSO Act,2012.

DECISION AND REASONS THEREOF:

- 10. In this prosecution case, PW-1 'X' is the victim, PW-2 Aynal Bepari is the informant, PW-3 Nuruddin Ahmed and PW-5 Sahinur Bibi are independent witnesses, PW-4 Diljan Bibi is the mother of the victim 'X'.
- 11. Since PW-1 'X' is the alleged victim and PW-2 Aynal Bepari is the informant, so both PW-1 and PW-2 are vital witnesses. Let us see the evidence of this two witnesses at first.

PW-1 'X' has stated in her evidence that the accused was her tutorial teacher. She went to the house of the accused for tuition. On the day of occurrence, she went to the house of the accused. The other students were also with her. After end of class, she had chat with the wife of the accused. The brothers of the accused asked her to go home and they told her harsh words. She went home and told her parents all about the occurrence. Her father, then, lodged the ejahar against the accused. She gave her statement before the Magistrate, Ext-1 is the said statement and Ext-1(1)(2)(3) are her signatures. She gave her statement Ext-1 as per instruction of village headman. PW-1 denied to commit sexual intercourse on her by the accused nor he did any evil on her.

In her cross, PW-1 has sternly denied to commit sexual intercourse on her by the accused.

12. PW-2 Aynal Bepari has stated in his evidence that 'X' is his daughter. The accused was tutorial teacher of his daughter. His daughter went to the house of the accused for tuition. On the day of occurrence, 'X' went to the house of the accused. After end of the class, 'X' had talked with the wife of the accused. At such, the brothers of the accused bullied her and asked to go home. PW-2 has also stated that his daughter told him about the occurrence and accordingly he lodged the case against the accused. He gave thumb impression on the ejahar. PW-2 has also stated that the accused did not commit sexual intercourse on his daughter.

In his cross, PW-2 has stated that the family of the accused is his relative. He is an illiterate. He does not know the content of the ejahar.

- 13. Thus, minute scrutiny of evidence of PW-1 'X' and PW-2 Aynal Bepari shows that that both of them have adduced evidence not incriminating the accused. According to PW-1, the brothers of the accused persons bullied her when she was chatting with the wife of the accused and when she told her parent, he lodged the ejahar against the accused. PW-1 denied to commit rape on her by the accused. Same is the evidence of PW-2. PW-2 has made clear that he lodged the ejahar on the basis of the information given by his daughter. PW-2 has also denied to commit rape on his daughter by the accused. So there found no inculpatory evidence adduced by PW-1 and PW-2.
- 14. PW-3 Nuruddin Ahmed, PW-4 Diljan Bibi and PW-5 Sahinur Bibi have adduced their evidence in the same tune that when the brother of the accused person bullied her asking to go home, she told her parents all about the occurrence and on the said information, PW-2 Aynal Bepari lodged the ejahar against the accused. So, PW-3,4 and PW-5 have adduced evidence not incriminating the accused.
- 15. Being the said position of evidence of prosecution witnesses, it is clear that the prosecution evidence is not sufficient Contd.Page-5.

and satisfactory to prove that there was penetrative sexual assault on PW-1 'X' by the accused or the accused committed rape on PW-1 'X'. The prosecution case is dearth of merit.

- 16. The prosecution has failed to prove it's case U/s.376 I.P.C and Sec.4 of POCSO Act against the accused beyond all reasonable doubt.
- 17. Held, the accused is not guilty U/s.376 IPC and Sec.4 of POCSO Act.

Accordingly, the accused is acquitted and set at liberty.

The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal of this court on this 27th day of November, 2018.

Transcribed & Typed by

Special Judge Dhubri

Stenographer
Court of the Special Judge
Dhubri

APPENDIX

Prosecution Witnesses

PW-1 X/the victim

PW-2 Aynal Bepari

PW-3 Nuruddin Ahmed

PW-4 Diljan Bibi

PW- 5 Sahinur Bibi

Defence Witness :- NIL

Prosecution Exhibits:

Ext-1 Statement of victim U/s.164 Cr.P.C

Special Judge Dhubri