IN THE COURT OF ADDITIONAL SPECIAL JUDGE..... BIJNI.

Present: N.U. Ahmed,

Addl. Special Judge,

Bijni.

Special(P) case No.14(B)2019
U/S 376 (2)(i) of the IPC, R/W section 6 of the POCSO Act.

THE STATE OF ASSAM

-VS -

Sahinur Mondal..... Accused.

APPEARANCE :

Advocate for the prosecution

: Mr. P. Dev Ray, Learned Addl. P.P.

Advocate for the defence

: Mr. S. K. Das, Learned Advocate.

Date of charge

: 17-09-2019

Date of evidence

: 26-09-19, 09-10-19 & 13-11-19

Date of Argument

: 18-11-19.

Date of Judgment

: 18-11-19.

JUDGMENT

1. The prosecution case, in brief, is that on 22.07.19, informant Nurul Islam lodged an FIR with the I/C Borobazar O.P alleging inter-alia that on 21.07.19 at about 1.00 p.m. accused Sahinur Mondal called his 14 years 7 months old daughter (name withheld here in after known as victim "X") with an inducement to marry her and took her on the bank of river Sidli and committed penetrative sexual assault. One Moijuddin saw the incident of penetrative sexual assault and he tried to catch the accused but he fled away. Said Moijuddin asked his daughter about the incident and his daughter reported to him that accused person with a promised to marry her committed penetrative sexual assault on her. Hence, the present case.

On receipt of the FIR, I/C Borobazar forwarded the same to O. C. Bijni P. S. to register a case. On receipt of the same O. C. Bijni P.S Case registered a case being No. 242/18, U/S 376(2)(i) of the IPC, R/w Sec. 4 of the POCSO Act and started investigation.

Addl. Special Jud

During investigation I. O. visited the place of occurrence, recorded the statement of witnesses, recorded the statement of victim girl under section 164 of the Cr. P. C. by Judicial Magistrate and after completion of investigation I.O. submitted charge sheet against the accused Sahinur Mandal u/s 376(2)(i) of the IPC R/W section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short here in after called as POCSO Act)

3. After receiving the charge sheet cognizance was taken u/s 376(2)(i) of the IPC, R/W section 6 of the Protection of Children from Sexual Offences Act, 2012, against the accused Sahinur Mandal and started a Special (P) case. Copies of the relevant documents were furnished to the accused person as per provision of section 207 of the Cr. P. C. After hearing both the sides learned Advocate and on perusal of case record charge was framed u/s 376(2)(i) of the IPC, R/W section 6 of the POCSO, Act, 2012 and the contents of charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

During trial prosecution side examined as many as seven witnesses including informant and the victim. Accused was examined u/s 313 of Cr. P. C. and recorded his statement in separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. I have heard argument put forwarded by learned advocate of both sides. I have gone through the case record as well as evidence on record.

POINT FOT DETERMINATION

- 6. (i) What was the age of victim "X" at the time of occurrence?
 - (iii) Whether the accused person committed rape on the victim "X" on 16-07-19 and 21-07-19 at Bhauraguri under Bijni P. S.?
 - (iv) Whether the accused on the aforesaid date, time and place committed penetrative sexual assault on victim "X"?

:DISCUSSION, DECISION AND REASON THEREOF:

7. To bring home the charges the prosecution examined seven witnesses including the informant, M.O and victim. Let me scrutinize the evidence on record to decide the

Addi. Special Judge
Biini
7.

points.

P.W.1, Nurul Islam, is the informant of this case. PW1 in his deposition has deposed 8. that victim "X" is his daughter. He knew the accused Sahinur Mandal. On 21-07-19 at about 4/4.30 P.M he returned home from Bijni and found that his daughter "X" was not at home. They made search of his daughter and his daughter was found near a canal of the village. They also found Sahinur Mandal along with his daughter. His son-in-law Moijuddin Ali and Sanowar Hussain interrogated his daughter and she reported to them that she was gossiping with accused Sahinur near the canal. Thereafter, he lodged the FIR. He proved the FIR as Exhibit-1 and Exhibit-1(1) is his signature. He further stated that at the time of occurrence the age of his daughter Nilima Begum was 14 years 7 months. During investigation police seize one School Certificate of his daughter Nilima Begum and he put his signature in the seizure list. He proved the said seizer list as Ext.2 and Ext.2(1) is his signature.

During his cross-examination, he stated that due to misunderstanding he lodged Sthe FIR. He had not seen any incident.

P.W.2, Moijuddin Ali, in his deposition has deposed that informant Nurul Islam is his father-in-law. Victim "X" is his sister-in-law. He knew the accused Sahinur Mondal since from the date of occurrence. About 2 months ago, one day his father-in-law Nurul Islam telephone him at about 1/1.30 p.m. and asked him whether victim "X" gone to his house. He replied that victim "X" has not come to his house. Thereafter, his father-in-law called him to his house to find out victim "X". Thereafter, he and his another brother-in-law to search his sister-in-law victim "X" went to the house of his father-in-law. While they were searching victim "X" then they found victim "X" near a canal and after seeing them accused Sahinur left the place of occurrence. From back side they saw accused Sahinur Mondal. Thereafter, they took victim "X" to his father-in-law's house. They kept victim "X" in her house and left his father-in-law's house. Thereafter, his father-in-law filed this case. During investigation police seized one school certificate of victim "X" and he put his signature in the seizure list. He proved the seizer list as Ext.2 and Ext.2 (2) is his signature. P.W.3, Abed Ali, in his deposition has deposed that he know the informant who is

During his cross-examination, he stated that he had not seen the incident.

place of occurrence and asked him about the incident.

his co-villagers. He also know victim "X". He knows the accused Sahinur Mondal. In the month of July of this year, one day he heard that victim "X" and accused Sahinur was

P.W.4, is the victim "X". P.W.4 in her deposition has deposed that about 6 months 11.

notice went to the found together near the drain. Thereafter, Nurul Islam lodged the FIR. Police went to the

10.

SESSION

ago she had love affair with the accused person. She further stated that about 2 months ago one day at about 1.00 P.M. she and accused Sahinur was talking by sitting on the sildong while they were talking then his brother-in-law Moijuddin saw them and reported to her father and her father filed this case. She further stated that after filing the case Police took her to court and recorded her statement. She prove her statement as Ext.3 and Ext.3 (1) and Ext.3 (2) are her signature.

During her cross-examination, she stated that on the tutor of her brother-in-law she has given statement before the Magistrate. She further stated that no physical relationship established between her and the accused person.

P.W.5, Niren Ch. Rabha, in his deposition has deposed that on 22.07.19, he was 12. working at Borobazar O.P as in-charge. On that day, he has received a written FIR from one Nurul Islam. On receipt of the FIR he entered the same in the general diary of the O.P and made G.D entry No. 3/4 uaccu 22.07.25

P.S for registration of a case. He took the charge of investigation himself. He went to the O.P and made G.D entry No. 374 dated 22.07.19 and forwarded the FIR to the O.C Bijni Mace of occurrence, visited the place of occurrence, drew the sketch-map of the place of sccurrence and recorded the statement of witnesses and brought the victim girl before *the court for recording her statement u/s 164 Cr.PC. He sent the victim girl to J.S.B Civil Hospital for medical examination and seized one School Certificate of victim girl. he proved the seizer list as Ext.2 and Ext.2(3) is his signature. he further stated that O.C Bijni P.S registered a case being No. 242/19 and entrusted him for completion of the investigation. Thereafter, he collected the medical report of the victim girl. The accused surrendered before the court and the court sent him to jail hajot and he interrogated him in the Abhayapuri Jail premises. After completion of investigation he submitted charge-sheet against accused Sahinur Mondal u/s 376(2)(i) of the IPC R/w Sec. 4 of POCSO act. He proved the charge sheet as Ext.4 and Ext.4(1) is his signature.

During his cross-examination, he stated that he went to the place of occurrence on 22.07.19. He could not say the boundary of the place of occurrence as because the sketch map prepared by him has misplaced. Defence side put suggestion to him that he had not prepared the sketch-map, which he denied. Defence side also put suggestion to him that without proper investigation he filed charge-sheet against the accused person, which he denied.

P.W.6, Dr.(Mrs) Dipali Bordoloi Manta, in her deposition has deposed that on 23.08.19, he was working at JSB Civil hospital as SDMO. On that day, he had examined Victim "X", aged 14 years 7 months, Vill- Bhawraguri, P.S Bijni. Dist-Chirang (Assam) and she was escorted by WPC Chayanika Das and her father Nurul Islam. She examined her

Addl. Special Ju

in connection with Bijni P.S Case No. 242/19 u/s 376(2)(i) IPC R/W Sec. 4 of POCSO Act.

On examination she found the followings:-

a. History of the Patient kidnapped on 21.07.19 at 1 p.m. and returned home at 5 p.m. same day.

Physical Examination:-

- a. Height- 4'1"
- b. Weight- 30 Kg.
- c. Teeth- 7/7 7/7
- d. Scalp hairs- present.
- e. Axillary hairs present.
- f. Pubic hairs present.
- g. Beards, moustaches and body hairs- Nil.
- h. Breasts- develop.

History of puberty-

- . Menarche- 2 years ago.
- b. Menstrual cycle- Regular.
- c. Last menstrual period- 06.07.19.

Genital Examination-

- a. Hymen-absent.
- b. Vagina 1 f. dip.
- c. Evidence of venereal diseases- Nil.
- d. Evidence of injury on her body or private parts- No any injury or violent mark present in her private part.
- e. Vaginal smears taken on glass slides for laboratory investigation advised.

General mental condition-

- a. Co-operation and behavior good.
- b. Intelligence and memory good.
- c. Gait normal.

Report of Radiological investigation Skiagram bone age is less than 18 years as the lower epiphyses of the radius and ulna are not fused.

Result of Laboratory Investigation-

a. Vaginal swab test for spermatozoa not seen.

Opinion:-

It could not been ascertained that the girl is physically assault or not. She further stated that Ext.5 is the Medical Report and Ext.5(1) is her signature.

SESSION SESSIO

Special Ju

14. P.W.7, Habibur Rahman, is the bother of informant Nurul Islam. PW7 in his deposition has deposed that he know the accused Sahinur Mandal. He also know the victim girl who is his niece. About 3 months ago, he heard that Sahinur Mondal committed rape on victim girl. Except this, he did not know anything about the case.

During his cross-examination, he stated that after 3/4 days of the incident, he heard about the incident. He heard about the incident from his brother. Defence side put suggestion to him that from his brother he had not heard about the incident, which he denied.

15. From the evidence on record it reveals that there is no dispute regarding age of the victim girl. From the evidence on record it reveals that the age of the victim girl at the time of occurrence was 14 years 7 months. So, I have nothing to hesitate to hold that at the time of occurrence age of the victim "X" was below 15 years and she was child as define u/s 2(d) of the POCSO Act.

Next, we should decide whether the accused person committed rape or committed 16. aggravated penetrative sexual assault on the victim "X" or not. In this regard the evidence of PW4 i. e. victim "X" is very much important. FW in the secured person committed penetrative sexual assault on her. Though, PW4 in her assault on her on two occasion but during cross-examination she clearly stated that no physical relationship established between her and with the accused person. From the evidence of PW4 it also reveals that she had love affair with the accused and on the date of occurrence she was gossiping with the accused near the river and on seeing them in a position of talking, her father lodged the FIR. She also stated that she had given statement before Magistrate on the instruction of her brother-in-law. PW1 is the informant of this case. PW1 though in the FIR stated that accused person committed penetrative sexual assault on the victim "X" but PW1 in his evidence nowhere stated that accused person committed penetrative sexual assault on victim "X". As per statement of FIR, PW 2 saw the incident of penetrative sexual assault, but PW2 in his evidence nowhere stated that he saw the accused and victim "X" in a compromising position. PW4 made a contradictory statement as such her evidence is not reliable. Moreover, though the PW1 and PW4 had not supported the prosecution case but the prosecution has not declared them as hostile witnesses. The medical evidence also negated the penetrative sexual assault on victim So, considering the entire evidence on record, I find that the prosecution side failed to prove that accused person had committed rape or aggravated penetrative sexual assault on the victim "X". Therefore, I have nothing to hesitate to hold that the prosecution failed to prove the charges against the accused beyond all reasonable doubt.

Addi Special s

- 17. From the discussion made above, I find that the prosecution failed to prove the charges leveled against the accused beyond all reasonable doubt. Hence, accused Sahinur Mandal is found not guilty u/s 376(2)(i) of the IPC R/W Sec. 6 of the POCSO Act and he is acquitted from the charges and set him free at his liberty forthwith.
- 18. Send a copy of the judgment and order to the District Magistrate, Chirang as per provision of section 365 of the Cr. P. C.

19. Considering the fact and circumstance of the case, I find that this is not a fit case to recommend the DLSA, Chirang for victim compensation u/s 357-A Cr. P. C.

Bail bond furnished by the accused person shall remain in force till next six months mom today as per provision of section 437-A of the Cr. P. C. Return the seized document to the informant in due course of time.

Given under my hand & seal of this court on this the 18th day of November, 2019.

Dictated and corrected by me,

Addusties elidige udge Bijni. Bijni

Typed by.

Proshanta Dev Roy,

Stenographer Gr.III

Additional Special Judge,
Addl. Special Judge
Bijni;;;;

APPENDIX

(A) Prosecution witnesses:

PW1- Nurul Islam.

PW2- Moijuddin Ali.

PW3- Abed Ali.

PW4- Victim "X".

PW5- Niren Ch. Rabha.

PW6- Dr.(Mrs.) Dipali Bordoloi Manta

PW7- Habibur Rahman.

(B) Prosecution exhibit-

Ext.1- FIR

Ext.2- Seizure List.

Ext.3- statement of victim girl u/s 164 of the Cr. P. C.

Ext.4- Charge-sheet.

Ext.5- Medical Report.

(C) Defence witnesses- Nil.

(D) Defence exhibit- Nil.

Atteitional Gracial Judge,