IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR SPECIAL POCSO CASE NO. 20 of 2017

Under section 5(g)/5(p)/5(l) of POCSO Act. (Arising out of Tezpur PS Case No. 1310 of 2016)

State of Assam

-Vs-

- 1. Md.Ainul Haque
- 2. Md. Abdul Rejek
- **3. Md. Gulzar Hussain** ... Accused Persons

Present: Smti I. Barman, AJS

Special Judge, Sonitpur, Tezpur

For the State : Mr. S. Maitra,

Special Public Prosecutor.

For the accused Ainul Haque: Mr. D. Baruah, Advocate.

For the accused Ainul Haque : Mr. E. Alam , Advocate.

For the accused Ainul Haque: Mr. D. Borah, Advocate

Date of Argument : **02-01-2020.**

Date of Judgment : **06-01-2020.**

<u>JUDGMENT</u>

1. The prosecution case against the accused persons as projected in the FIR (Ext. 3), in brief, is that on 30-07-2016 at around 9.00 PM, when the informant's 16 years old daughter came to the road accused Ainul Haque, Abdul Rezek and Gulzar Hussain had taken away the victim by a bike to some unknown place and committed rape on her.

- 2. On receipt of the FIR (Ext.3) on 02-08-2016 from the informant (PW2) with the I/C Salonibari Outpost, GDE Case No. 47 dated 02.08.16 was entered and on forwarding the same to the O/C, Tezpur P.S. Case No. 1310/2017 u/s 366 (A)/376 of IPC r/w section 4 of POCSO Act was registered and launched investigation of the case. During investigation, the investigating Officer recorded the statement of the witnesses, got recorded the statement of the victim u/s 164 Cr.P.C., sent the victim for medical exmamination and on completion of investigation having found materials, laid charge sheet against the accused Ainul Haque and absconder Abdul Rezak and Gulzar Hussain u/s 366(A)/376(D)/34 of IPC r/w section 4 of POCSO Act and the case was transferred to the court of the learned Addl. Sessions Judge (FTC) Sonitpur, Tezpur for disposal.
- On producing the accused persons, after furnishing the copies of the documents as required u/s 207 of Cr.P.C. and after going through the police report and having heard both parties, Charge for offence u/s 5(g) and 5 (p) of POCSO Act against accused Abdul Rezak and for offence u/s 5(l) of POCSO Act was framed against accused Gulzar Hussain. Particulars of the charge on being read over and explained to the accused persons, they pleaded not guilty and claimed for trial. Lateron the case was withdrawn to this court for disposal on transfer of the Ld Addl. Sessions Judge (FTC), Sonitpur, Tezpur.
- **4.** To substantiate the case, prosecution examined only 3(three) witnesses. On closure of the prosecution evidence, statement of the accused persons were recorded u/s 313 Cr.P.C. wherein the accused denied the allegations and declined to adduce evidence.
- **5.** I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.

- **6.** Points for decisions-
- (1) Whether the accused Ainul Haque and Abdul Rezak on 30-07-2016 at Rupkuria under Chariduar Police Station committed gang penetrative sexual assault on the victim girl Miss "X", and thereby committed an offence under section 5(g) of POCSO Act punishable u/s 6 of POCSO Act.
- (2) Whether the accused Abdul Rezak on 30-07-2016 at Rupkuria under Chariduar Police Station being related uncle of the victim, committed penetrative sexual assault on her and thereby committed an offence under section 5(p) of POCSO Act punishable u/s 6 of POCSO Act.
- (3) Whether the accused Gulzar Hussain on 31-07-2016 and thereafter committed penetrative sexual assault on the victim girl Miss "X" more than once and thereby committed an offence under section 5(I) of POCSO Act punishable u/s 6 of POCSO Act.

Discussions, Decisions and reasons thereof:

- In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.
- 8. PW 1 Dr. Tutumoni Hadique the medical officer in her evidence stated that on 02-08-16, in reference to Salonibari OP GD Entry no. 47 dated 02-08-16, she examined the victim Miss 'X' who gave history of elopment with a known person on 30th July and rescued on 1st August from Jagiroad. On examination of the victim found her hymen absent but no injury on her body or private part was found. The medical officer opined that the victim is below 18 years. She proved the medical report as Ext. 1. During cross she stated that the age of the victim girl may vary on either side.

- 9. PW2 the informant as well as the father of the victim in his evidence stated that due to quarrel between the victim and her inlaws, they brought the victim to his house. But after two days, the victim had quarrelled with her(victim) sister and out of anger she went out of the house to go to Kerala where her husband resided. On the way the victim asked for money from the accused persons. Thereafter she boarded in a vehicle to proceed towards Jagiroad and then finding her somebody took her to Jagiroad police station. On being informed by police, he went to Jagiroad PS and filed the FIR as per dictation of police but lateron he came to know that the allegations on the accused persons are false. During cross he admitted that victim is a married woman and at the time of marriage, she was above 18 years old.
- 10. PW3 the victim Miss 'X' in her evidence stated that on the day of the incident at around 11 AM a gaurrel took place between her husband and her mother in her husband's house and thereafter her mother brought her to her parental house. But after 2/3 days, in the evening time, a quarrel took place between her and her sister Sehnaz and then out of anger she came out of the house to go to Kerala. On the way she met all the three accused persons and asked money from them to go to Kerala. But they refused and asked her to go back home. Then she came to Tezpur by auto and went to Guwhati by bus, but at Jagiroad one person when heard from her that she was going to Kerala, he handed over her to Jagiroad Police station. Thereafter her parents brought her back to Goroimari. At Goroimari out post, police rebuked her and asked her to say that the accused persons raped her. She proved her statement u/s 164 Cr.PC as Ext.2.During cross she stated that she gave her statement before the Magistarte as tutored by the police. She clearly stated that the three accused persons whom she met while coming out of the house to go to Kerala, asked her to return home, but none of them did commit any bad act with her. She further stated that when she asked Gulzar Hussain who is her uncle

in relation for money to go to Kerala, he rebuked her and asked to return home. She admitted that after attaining 18 years, she entered into marriage.

- In the case, the informant as well as the father of the 11. victim(PW2) in the FIR mentioned the age of the victim as 15 years. But during cross the informant as well as the victim admitted that the victim got married after attaining 18 years of age and the incident occurred thereafter. Although as per the medical evidence the victim is below 18 years of age at the time of the incident, but it is well settled that medical evidence is not conclusive proof and it can vary two years on either side. The medical officer also admitted in cross examination that the age may vary on either side. Moreover when the victim and her father who are the best persons to know the exact age, mentioned the age of the victim above as 18 years at the relevant time, it can be safely held that she was a major one at the time of icident. In the above evidence, I unhesitatingly held that the victim is a major girl at the time of the incident.
- 12. Now, let us see whether the accused persons committed any offence. As per the ejahar, the alleged offence is that on the day of the incident when the victim came to the road, accused persons had abducted her by a motor cycle and committed rape on her. But the victim in deposition stated that on the day of the incident after guarrel with her sister, out of anger she came out of her parental house with intend to go to Kerala, where her husband works and on the way she seeing the accused persons on the road, asked them for money. But when they refused, she boarded in a bus to go to Guwahati. On her way, she met a person, who enquired her where she was going and when she replied that she was going to Kerala, the person advised her not to go to Kerala alone and took her to Jagiroad police station wherefrom her parents brought her to Goroimari. She admitted in her cross examination that she gave her statement before the Magistrate as tutored by the police of Goroimari outpost. She clearly denied the allegations levelled

against the accused persons. The informant in the same tune stated that on the day of the incident after a quarrel, out of anger the victim came out of thier house with intent to go to Kerala and boarded a vehicle towards Jagiroad and then somebody had taken her to Jagiroad police station.

- 16. The version of the victim and her father themselves clearly indicates that neither the victim was taken away by the accused persons nor they committed any bad act with her. Rather it is established that on the day of incident due to some quarrel, the victim came out from her parental house and proceeded towards Guwahati to go to her husband's work place Kerala on her own accord. She clearly admitted in her cross examination that she levelled the allegations of rape against the acceed persons as she was threatened to do so by the police of Goroimari outpost and also she made her statement before the Magistrate as tutored by the police. From the facts and circumstances of the case and evidence of the Pws discussed above clearly reveals that the accused persons had not committed any offence as alleged against them. Rather it can be said that they became scapegoat as a result of expediency based on false implication and they can not be held guilty for alleged offence of penetrative sexual assault or any other provision of law.
- **17.** From all the above facts and circumstances of the case discussed above, I held and decide that the prosecution failed to prove it's case beyond all reasonable doubt.
- **18.** Accordingly, accused Md. Ainul Haque, Abdul Rezak and Gulzar Hussain are acquitted from the charge of offence u/s 5(g),5(p) and 5(l) of POCSO Act punishable u/s 6 of POCSO Act. and set them at liberty forthwith. their bail bonds shall remain in force till next six months.

19. Given under my Hand and Seal of this Court on this the6th day of January, 2020.

(I.Barman)

Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(I.Barman

Special Judge, Sonitpur, Tezpur.

APPENDIX Prosecution Witnesses

- **1. PW1:-** Dr. Tutumoni Handique.
- **2. PW2:-** Father of the victim/informant.
- 3. PW3:- The victim.

EXHIBITS.

Exhibit 1 : Medical report.

Exhibit 2 : 164 Cr.P.C. statement of the victim.

Exhibit 3 : F.I.R.

(I.Barman)
SPECIAL JUDGE,
SONITPUR: TEZPUR