# IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE (SPECIAL JUDGE), CACHAR, SILCHAR.

### SPL. (POCSO) Case No.26 of 2018.

Under Section 376 of IPC & Section 6 of POCSO Act.

Present :- Smt. Angjeeta Mahanta, AJS,

Additional Sessions Judge (Special Judge),

Cachar, Silchar.

State of Assam ----- Complainant.

- Versus -

Krishna Goala @ Megnath Goala--- Accused.

### Appearance:-

For the prosecution :- Smti. B. Acharjee, learned Special P.P.

For the defence :- Sri M.K. Barlaskar, learned counsel.

Date of evidence :- 17.03.2020.

Argument heard on :- 17.03.2020.

Judgment delivered on :- **17.03.2020**.

#### **JUDGMENT**

- 1. Prosecution case in brief is that on 31.07.2014, the informant lodged an FIR with the O/C of Udharbond P.S. stating inter alia that since one year prior to lodging of the FIR the accused used to come to her house. It is further stated that the victim used to remain alone in the house as her brother used to go for his work at Madhura. It is also alleged that the accused forcibly established sexual relation with her and caused her pregnant for 5 months.
- 2. Accordingly, O/C Udharbond P.S. registered Udharbond P.S. Case No. 136/2014 and investigation commenced. During the course of investigation the I.O. visited the place of occurrence, drew up a sketch map of the place of

occurrence and got the victim girl medically examined. The I.O. also examined the witnesses and also recorded their statement and on completion of investigation the I/O submitted charge sheet against the accused person U/s 6 of POCSO Act.

- 3. As the offence U/S 6 of POCSO Act being exclusively triable by the Special Court, Id. CJM Cachar, Silchar sent the case record to the Court of the learned Special Judge, Cachar, Silchar. In due course, upon appearance of the accused and after hearing both sides learned Special Judge framed formal charge U/S 376 of IPC and Section 6 of POCSO Act against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried. Subsequently, the case was transferred to this Court for disposal.
- 4. Prosecution examined 2 (two) witnesses including the informant/victim. Statement of the accused person u/s. 313 Cr.P.C. is dispensed with as there was no incriminating evidence against him. Defence declined to adduce evidence.
- 5. I have gone through the entire evidence on record and have also heard argument of both the sides.

# 6. **Points for Determination**:-

- (i) Whether the accused person committed rape upon the informant-victim, as alleged?
- (ii) Whether the accused person committed aggravated sexual assault upon the informant-victim, as alleged?

## **DISCUSSION, DECISION AND REASONS THEREOF**

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW-1 is the informant/victim of this case. She deposed in her evidence that about 3/4 years back while she was roaming with the accused outside her home, the village people finding her with the accused advised her to lodge FIR against the accused and accordingly, she lodged the FIR against the accused wherein she has put her thumb impression. She further stated that police got her medically examined. She also stated that she was acquainted with the accused since before one year of the date of occurrence and used to move with him and that at the time of lodging the FIR she was carrying pregnancy by the accused for about one month which was miscarriaged later on. She further stated that at present she has a female child by the accused whose present age is one year. She also stated that at the time of occurrence her age was 18 years.

In her cross-examination by the defence, the PW-1 stated that after few months of the occurrence she got married with the accused as per Hindu rites and rituals and presently she is residing with the accused as his wife. She further stated in her cross-examination that she did not write the FIR and cannot say the contents of the FIR and that she has no grievance against the accused.

9. PW-2, the brother of the victim/informant deposed in his evidence that he knows the accused Krishna Goala and that on the date of occurrence while the informant was moving outside the home with the accused, the local people seeing her with the accused advised her to lodge FIR against the accused and accordingly, she lodged the FIR against the accused. He further stated that police got her medically examined. He further stated that at the time of occurrence the age of the victim was 18 years.

In his cross-examination by the defence, the PW-2 stated that under the pressure of the villagers the case was filed and that he does not know anything about the occurrence. He further stated in his cross-examination that after few months of the occurrence his sister was given in marriage with the accused as per Hindu rites and rituals and presently she is residing with the accused as his wife and they are having a female child out of their wedlock and that they have no grievance against the accused.

- 10. Appreciating the materials on record, it is found that the PW-1 in her examination-in-chief has stated that at the time of occurrence her age was 18 years and the PW-2 i.e. the brother of the informant/victim also stated in his examination-in-chief that the informant/victim was 18 years old at the time of occurrence. Therefore, considering the evidence of the victim herself as well as that of the brother of the victim, I find that the victim was a major at the time of occurrence. Though, the informant/victim stated in her evidence that at the time of filing FIR she was carrying pregnancy of one month by the accused and later on it was miscarriaged, there is no evidence that any element of force or cheating was involved in obtaining the consent of the alleged victim for causing her pregnant.
- 11. In view of the above, it is not established that the accused had sexual intercourse with the victim without her valid consent. From the above discussion, there is no indication that the alleged victim was sexually assaulted by the accused. On consideration of the evidence on record, I am unable to hold that there is sufficient evidence before the Court to return a finding of guilt against the accused person and the points are therefore answered accordingly.
- 12. In view of the aforesaid evidence discussed, I hold that the charges against the accused person are not established. The prosecution has failed to prove its case beyond reasonable doubt. Consequently, the accused is acquitted of the offences u/s.376 of I.P.C. & Section 6 of the POCSO Act. He be set at

liberty forthwith.

13. The Bail bond shall remain in force for a further period of six months from today in view of Section 437A Cr.P.C.

Given under my hand and seal of this Court on this the  $17^{\text{th}}$  day of March, 2020.

Addl. Sessions Judge (Special Judge), Cachar, Silchar.

Dictated & corrected by me.

Addl. Sessions Judge (Special Judge), Cachar, Silchar.

Dictation taken & transcribed by Sujit Kr. Das.

# IN THE COURT OF THE ADDL. SESSIONS JUDGE (SPECIAL JUDGE), CACHAR, SILCHAR

Spl. (POCSO) Case No. 26 of 2018. APPENDIX

# (A) PROSECUTION WITNESSES: -

PW-1 – The informant/victim.

PW-2 – The brother of the informant/victim.

- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: NIL.
- (D) <u>DEFENCE EXHIBITS</u>: NIL.
- (E) COURT EXHIBITS: NIL
- (F) EXHIBITS PRODUCED BY WITNESSES: NIL.

Addl. Sessions Judge (Special Judge), Cachar, Silchar.