Present :-Mr. R.A. Tapadar,AJS

Date: 21.01.2020.

SPECIAL CASE NO. 22 of 2019

(Under Section 376(AB) of I.P.C.

& Sec. 6(m) of Protection of Children from Sexual Offences Act.

The State of Assam
-Versus-

Md. Abdul Salam

....Accused Person.

APPEARANCE

For the State......Mr. Sudhaman Ch. Ray, learned Addl.P.P.

For the DefenceMr. S.M. Shahjahan, learned Advocate.

Date of Framing Charge: 06-12-2019

Evidence recorded on :-10.01.2020.

Argument heard on :-21.01.2020

Judgment delivered on :- 21.01.2020.

J U D G M E N T

- 1 Md. Abdul Salam (hereinafter referred to as "accused") is before this court facing accusation for the commission of offence U/s.376(AB) of I.P.C. & Sec. 6 of Protection of Children from Sexual Offences Act.
- 2. The prosecution case, in brief, is that the informant Majeda Khatun lodged an FIR before the Fakirganj Police Station on 29.05.2018 and *inter-alia* stated that on 27.05.2018 at about 7 pm, his 11 years old daughter Miss "X" went to the

house of the accused person to charge the mobile but the accused person gagged her mouth and took her near the bank of river Brahmaputra and committed penetrative sexual assault upon her. The informant stated that he was out of his home and as such there was delay in lodging the FIR. The informant prayed to take action against the accused person.

- 3. Based on the FIR the police registered Fakirganj P.S. Case No. 118/18 under Section 376(2)(i) IPC read with Section 4 of the POCSO Act. and commenced the investigation of the case. Police after investigation of the case submitted chargesheet against the accused person under Section 376(AB) read with Section 4 of the POCSO Act.
- 4. The learned Sessions Judge transferred the case to this court for trial. When the accused person appeared in the court, copies were furnish to him in terms of Section 207 Cr.P.C. The charges under Section 376(AB) IPC and under Section 6 of the POCSO Act were framed against the accused person. The charges were read over and explained to the accused person to which he pleaded not guilty and claimed trial. 5. The prosecution, in order to establish the guilt of the accused person, examined as many as 3(Three) witnesses including the victim. The defence chooses not to lead any evidence. The statement of the accused person under Section 313 Cr.P.C. was recorded. The accused person pleaded his innocence.

6. Heard both sides.

7. POINTS FOR DETERMINATION

- i) Whether on 27.05.18 at about 7 pm committed rape upon the 11 years old daughter of the informant near the bank of river Brahmaputra and thereby committed an offence punishable under Section 376(AB) of the Indian Penal Code and within the cognizance of the Court of Sessions.
- ii) Alternatively, that you on the same day, time and place committed aggravated penetrative sexual assault on a 11 years old daughter of the informant and thereby committed an offence punishable Under Section 6 of the POCSO Act and within the cognizance of the Court of Special Judge.

8. DISCUSSION, DECISION AND REASONS THEREOF:-

I have gone through the F.I.R., the evidence on record and also considering the submission of the learned counsel of the accused person and the learned Special Public Prosecutor. The charge against the accused person is that on 27.05.18 at about 7 pm committed rape upon the 11 years old daughter of the informant near the bank of the river Brahmaputra and alternative charge was also framed under Section 6 of the POCSO Act. The informant, the father of the victim in his evidence stated that the incident took place about 1 year ago and on that day there was some altercation between his daughter and some other person. Due to some mis understanding, he lodged the FIR. The mother of the victim PW2 and PW3 stated that there was some altercation between the accused person and the victim. The evidence on record does not disclose that the accused person committed penetrative sexual assault on the

4

victim. Accordingly, the accused person is acquitted from charge under Sction 376(AB) and Section 6 of the POCSO Act and set at liberty, forthwith..

His bail bond shall remain in force for a period of six months in terms of Section 437A Cr.P.C.

Given under my hand and seal of this court on this $21^{\rm st}\,$ day of January 2020 at Dhubri.

Dictated & Corrected by me

Special Judge, Dhubri

Mr. R.A. Tapadar,AJS Special Judge, Dhubri

APPENDIX

A. **Prosecution Witnesses:**

PW- 1 Md. Sonaullah

PW-2 Mustt. Meherjan Bibi.

PW- 3 'X'

B. **Documents Exhibited by Prosecution:**

Ext-1 Ejahar

C. Defence Witnesses :- Nil

D. **Defence Exhibit** : Nil

Mr. R.A. Tapadar, AJS Special Judge, Dhubri