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IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

Spl(POCSO) case No.3 of 2019

(U/S:341/323 I.P.C. read with Section 8 of POCSO Act).

State
-Versus-**Sri Rabi Barman Biswas**S/O Sri Jugal Barman Biswas
Village- Kanmuji
P.S- Dhula,Dist-Darrang
(Assam)
--Accused.

PRESENT: Sri P.K. Bora, A.J.S., Sessions Judge. Darrang, Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma.

AND

Learned advocate for the accused :Mr. Nurul Islam

Evidence recorded on :02/02/19, 01/03/19, 16/05/19,

25/06/2019 and 25/10/2019.

Argument heard on : 09/01/2020

Judgment delivered on :09/01/2020.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 23/08/2018 one Malati Biswas lodged an FIR before the O/C, Dhula Police Station stating that on 20/08/2018 at about 8.30 p.m. her 16 years old daughter Champika Biswas was allured to the house of one Bibi Biswas where an attempt was made to rape her by the accused Rabi Barman Biswas and when the incident came to the side of the informant, she and other came to the place of occurrence, then the accused fled away. That on the following day when a 'bichar' was held the accused instead of admitting his guilt he put allegation against the informant and she and her son Manoj Biswas were physically assaulted.
- 2. On the basis of the said FIR, Police registered a case, got the statement of the victim recorded. After completing the investigation a charge sheet was submitted against the accused U/S 341/323/34 I.P.C. read with Section 8 of the POCSO Act.
- 3. On appearance of the accused before this Court, the written charge U/S 323/341 I.P.C. read with Section 8 of POCSO Act explained and read over to the accused to which he pleaded not guilty.

4. Points for determination:

- (i)Whether on 20/08/2018 at about 8.30 a.m. the victim Champika Biswas was restrained by the accused in the house of Bibi Biswas?
- (ii)Whether on the same date and time the accused caused hurt voluntarily to informant Malati Biswas and her son Manoj Biswa?
- (iii)Whether the accused person made an attempt to cause sexual assault to Champika Biswas?

REASON AND DECISIONS THEREON:

- 5. In the course of trial, the prosecution examined PW1 Malati Biswas, PW2 Champika Biswas, PW3 Sultan Ali, PW4 Ranjit Biswas, PW5 Archana Biswas, PW6 Bibi Biswas, PW7 Bichu Bhadra and PW8 Nipan Baruah.
- 6. PW1 Malati Biswas has stated that on the day of the incident while her daughter Champika was in her niece's house, finding the accused following her there Champika Biswas cried out of fear. In this regard, she lodged an FIR. At that time Champika was 16 year. In her cross-examination, she specifically stated that the accused never tried to commit any unfair act with Champika in her niece's house.
- 7. PW2 Champika Biswas has stated that on the day of the incident while she visited her elder sister Bibi's house for brooming the accused came there and tried to pull her cloth. So, she cried out which attracted the nearby people to the spot. But in the meantime, the accused fled away. In this regard her mother lodged an FIR. She proved Ext.1 as her statement made in the Court.
- 8. In her cross-examination, she stated that in the marriage agreement his signature was forcefully taken by the accused Rabi Biswas. She also admitted that in the marriage agreement her age was shown as 20 year.
- 9. PW3 Sultan Ali, PW4 Ranjit Biswas and PW7 Bichu Bhadra knew nothing about the incident.
- 10. PW5 Archana Biswas has stated that on the day of the incident Champika rang up Rabi and called him to her house and both of them were found in the house of one Bibi.
- 11. PW6 Bibi Biswas has stated that she learnt from her aunt Malati that Champika had opened her house and at that time the accused Rabi also visited her house.

- 12. PW8 Nipan Baruah conducted investigation of this case. He recorded the statement of the witnesses, drew up sketch map, got the medical of the victim done and also got the statement of the victim recorded and he finally submitted charge sheet against the accused.
- 13. The accused person denied the indictments.
- 14. Heard argument advanced by the learned counsel of both the sides.
- 15. In this case the informant Malati Biswas, who is none but the mother of the victim denied the prosecution story. PW2 victim gave a incriminating evidence against the accused that on the day of the incident the accused visited one house following the victim and pulled her cloth. But at the same time, she also stated that there was marriage agreement between the accused and her and in that marriage agreement her signature was forcefully taken by the accused and her age was shown as 20 years. It has come that though the victim was taken before the Doctor of Mangaldfai Civil Hospital on 04/09/2018 for her medical examination during the course of investigation, but she refused to get her medical examination done. There is no documentary or oral evidence regarding her age before this Court. PW5 Archana Biswas in her evidence spoke against the victim. Her evidence is that it was the victim Champika, who called Rabi to the house of one Bibi over phone and both of them found together in the house of Bibi. There is no witness, who found both the accused and the victim in the house of PW6 Bibi Biswas. PW6 Bibi Biswas was not present at the time of the incident.
- 16. The evidence of PW2 Champika Biswas does not inspire confidence because she gave restricted evidence before this Court. In her evidence she did not speak clearly why there was a marriage agreement between them or what compelled her to institute a marriage with the accused. It is seen that though PW2 Champika Biswas was against the marriage agreement, which is said to have done forcefully,

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but she did not set law into motion against the alleged illegal act of the accused. The evidence of other witnesses is not helpful to the prosecution.

- 17. Therefore, the prosecution has failed to prove the case against the accused person beyond all reasonable doubt. Thus, the accused Rabi Biswas is acquitted and set at liberty forthwith.
- 18. Given under my hand and seal of this Court this 9th day of January,2020.

(P.K. Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

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APPENDIX:

(A)Prosecution witnesses:

(i)PW1 Malati Biswas (ii)PW2 Champika Bias (iii)PW3 Sultan Ali (iv)PW4 Ranjit Biswas (v)PW5 Archana Biswas (vi)PW6 Bibi Biswas (vii)PW7 Bichu Bhadra (viii)PW8 Nipan Baruah

B) Defense witness: Nil.

C)Exhibits:

(i)Ext.1 statement of victim (ii)Ext.2 FIR (iii)Ext.3 sketch map (iv)Ext.4 charge sheet

> Sessions Judge, Darrang, Mangaldai.

> > Typed by:

Nareswar Deka Stenographer.