IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.16/2018

U/S-313/34 OF IPC R/W Section 17 of POCSO Act, 2012 and 376 IPC R/W Section 4 of the POCSO Act, 2012

State of Assam

-Versus-

1. Sri Sunil Sutradhar

s/o-Sri Haren Sutradhar

resident of vill -Natun Hawlitari

P.S.-Boko

Dist.- Kamrup

2. Smti. Gita Sutradhar

w/o- Sri Sunil Sutradhar

resident of vill -Natun Hawlitari

P.S.-Boko

Dist.- Kamrup

3. Sri Dev Sutradhar

s/o-Sri Sanbadan Sutradhar

resident of vill -Goroimari Satra

P.S.-Chhaygaon

Dist.- Kamrup

4. Md. Fazal hoque, s/o-Lt. Kaju Sheikh resident of vill-Goroimari Satra

P.S-Chhaygaon

-----Accused persons

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor ------for the State

Md. A. H. Mullah, Ld. Advocate ------for the accused persons

Date of evidence: 22.01.2019, 24.01.2019.

Date of Argument: 06.02.2019

Date of Judgment: 06.02.2019

JUDGMENT

- 1. The Prosecution case in brief is that—the accused person—Sunil Sutradhar had sexual intercourse with the minor daughter of the informant since one year making false promise for which she got three months pregnant and on 28.10.2016 the accused persons—Sri Sunil Sutradhar, Smti. Gita Sutradhar and Sri Dev Sutradhar by inducing her had taken to Goroimari hospital for termination of her pregnancy. Hence, this case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 568/2016 U/S-376/313/34 of IPC R/W Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the accused person—Sunil Sutradhar, Smti. Gita Sutradhar, Dev Sutradhar and Fazal Hoque U/S-313/34 of IPC R/W Section 17 and 6 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 313/34 of IPC R/W Section 17 of the POCSO Act, 2012 against all the accused persons namely—Sri Sunil Sutradhar, Smti. Gita Sutradhar, Dev Sutradhar and Fazal Hoque. And charges U/S- 376 of IPC R/W Section 4 of the POCSO Act, 2012 are framed against the accused person—Sri Sunil Sutradhar. The aforesaid charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the Prosecution side examined as many as four (4) numbers of witnesses including the informant and the victim girl. Statement of the accused persons U/S-313 Cr. P.C are dispensed with as there is no incriminating materials against them.

5. POINT FOR DETERMINATION

- (I) Whether all the accused persons on 28.10.2016 at Goroimari causing miscarriage to the victim without her consent, in furtherance of common intention and thereby committed an offence punishable U/S 313/34 of IPC?
- (II) Whether all the accused persons on the same date, time and place abated the commission of penetrative sexual assault and miscarriage of the victim and thereby committed an offence punishable U/S 17 of POCSO Act?
- (III)Whether the accused person—Sunil Sutradhar since one year committed rape upon the minor daughter of the informant and thereby committed an offence punishable U/S 376 of IPC?
- (IV) Whether the accused person—Sunil Sutradhar since one year committed penetrative sexual assault on the minor daughter of the informant and thereby committed an offence of penetrative sexual assault U/S-3 which is punishable U/S 4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined as many as four (4) numbers of witnesses.
- 7. P.W.1, is Sri. Nitya Sutradhar is the informant of this case. He knows the accused persons, who are his neighbours. Prosecutrix is his daughter. She was about 12 years old at the time of occurrence. The incident took place about 2 years ago. P.W.1 disclosed that there was a boundary dispute between his family and the accused persons since many years and the accused persons used to torture him

mentally and physically over this matter. So, out of anger he lodged the false case against the accused persons. This witness also stated that the ejahar was written by some other person. Ext.1 is the ejahar. Ext. 1 (1) is his signature.

- 8. In his cross-examination, P.W.1 has stated that no incident as alleged in the ejahar had taken place with the prosecutrix. He does not know the accused—Fazal Hoque and he did not file any case against him.
- 9. P.W.2, Smti. Gita Sutradhar is the wife of the informant. She has deposed in her evidence that she knows the accused persons, who are her neighbours and the prosecutrix is her daughter. This witness disclosed that the incident took place about 2 years ago. She also disclosed that there was a boundary dispute between her family and the accused persons and the accused persons were torturing them mentally and physically. So, out of anger, they lodged a false case against the accused persons. This witness also disclosed that the ejahar was lodged by her husband as tutored by the village people. She revealed that no incident took place with their daughter (prosecutrix).
- 10. P.W.3, is the Prosecutrix. She has stated in her evidence that informant of this case is her father. She knows the accused persons, who are her neighbours. She stated that there is a boundary dispute between their family with the accused persons. So, out of anger her father lodged a false case against the accused persons. She also revealed that no incident as alleged in the ejahar had taken place with her. P.W.3 further stated that she gave her statement before the Magistrate and before the police as tutored by her father. Ext.2 is the statement recorded U/S-164 Cr. P.C. Ext. 2 (1 & 2) are her signatures. In her cross, she stated that she does not know the accused—Fazal Hoque.
- 11. P.W.4, Smti. Roma Sutradhar has stated in her evidence that she knows the informant, prosecutrix as well as the accused persons. She revealed that she did not hear anything about the incident.
- 12. Now let us see if the prosecution side has succeeded to prove the case.

- 13. Section 4 of the POCSO Act deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 14. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
 - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 15. Now, in this instant case, there is no allegation by the prosecutrix of any penetrative sexual assault or any kind of sexual assault upon her by the accused person—Sunil Sutradhar. The prosecutrix (P.W.3) made it clear in her evidence that the accused Sunil Sutradhar did not commit any penetrative sexual assault on her on the date of occurrence. No incident as alleged in the ejahar took place. Other P.Ws also supported the evidence of P.W.3 and confirmed that no such incident as alleged in the ejahar had taken place. And the prosecutrix implicated the accused Sunil Sutradhar for commission of rape is as tutored by her father. So, the offence U/S- 4 of the POCSO Act is not at all attracted in this instant case.
- 16. Coming to Section 376 of IPC, it has come out clearly from the evidences of P.W.1, 2 and 3 that the accused did not commit rape upon the prosecutrix by making false promises. P.W.1, P.W.2 and P.W.3, the vital witnesses stated that they lodged the

case out of anger as they had a boundary dispute with the accused persons. P.W.3,

the prosecutrix also made it clear that no incident of rape as alleged in the ejahar

had taken place and she gave her statement before the Magistrate and before the

police as tutored by her father. Nowhere, in their evidences the witnesses have

stated that the proscutrix became pregnant and she was aborted. So, there is no

question of implicating the accused persons under the offence of miscarriage and

abetted the commission of penetrative sexual assault. So, the offences U/S-313/34 of

IPC R/W Section 17 of the POCSO Act, 2012 against all the accused persons are also

not attracted in this case. And also the offences U/S-376 of IPC R/W Section 4 of the

POCSO Act, 2012 against the accused person Sunil Sutradhar is also not attracted in

this case.

17. In the result, the prosecution has miserably failed to prove the case beyond all

reasonable doubt against the accused persons— Sunil Sutradhar, Gita Sutradhar, Dev

Sutradhar and Fazal Hoque. Accordingly, the accused persons are held not guilty and

they are hereby acquitted of the offences U/S-313/34 of IPC R/W Section 17 of the

POCSO Act, and the accused person—Sunil Sutradhar is held not guilty and he is

hereby acquitted of the offences U/S-376 of IPC R/W Section 4 of the POCSO Act,

2012 2012 Act, and set at liberty forthwith. The bailor is discharged from his

liabilities.

18. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 06th day of February, 2019.

Special Judge,

Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, is Sri. Nitya Sutradhar

P.W.2, Smti. Gita Sutradhar

P.W.3, is the prosecutrix

P.W.4, Smti. Roma Sutradhar

Prosecution Exhibit

Ext.1 is the ejahar.

Ext.2. is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix.

Special Judge, Kamrup, Amingaon