IN THE COURT OF THE ADDL. SPECIAL JUDGE (F.T.C), LAKHIMPUR, NORTH LAKHIMPUR.

PRESENT

Sri P.C. Kalita, A.J.S., Additional Special Judge (F.T.C.), Lakhimpur, North Lakhimpur.

Special (POCSO) Case No.32/2016.

U/s-376/493/420 of IPC, R/w-Sec.4 of POCSO Act.

State of Assam
-Versus-

Sri Puna Behera, <u>Accused</u>.

APPEARANCE

For the State : Mr. M.Gogoi, Ld. Special P.P.

For the Accused : Mrs. Ivy Gogoi, Ld. Advocate (LAC).

Date of evidence : 15.12.2018, 17.12.2018, 04.01.2019,

05.01.2019.

Argument heard on : 07.01.2019. Judgment delivered on : **07.01.2019**.

JUDGMENT

- 1. The prosecution case, inter-alia, in brief, is that informant Sri Narayan Bhadra lodged an ejahar (Ext.4) on 01.06.2016 at Silonibari O.P. under North Lakhimpur P.S. alleging that the accused person namely, Sri Puna Behera committed rape on his daughter (the prosecutrix), aged about 16 years, giving false promise to marry her on the pretext of love affairs with her since last one year.
- 2. On receipt of the ejahar, the O/C, North Lakhimpur P.S. registered a case vide N.L.P.S. Case No.525/2016 u/s- 376/493/420 of

IPC and then the police conducted the investigation of the case and after completion of the investigation submitted charge-sheet u/s-376/493/420 of IPC, R/w- Sec.4 of POCSO Act against the accused person namely, Sri Puna Behera.

- 3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, charge under section- 376/493/420 of IPC, R/w- Sec.4 of POCSO Act are framed against the accused person, the same are read over and explained to them to which they have pleaded not guilty.
- 4. During trial prosecution has examined as many as 6 (six) witnesses. Considering the stand of the prosecution witnesses examined and also at the instance of Ld. Special P.P., prosecution evidence is closed. The accused person is examined under section 313 of the Cr.P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINT FOR DETERMINATION:**

- i) Whether the accused persons, since about one year before 01.06.2016 at Silonibari Tea Garden Bahbari Line under North Lakhimpur P.S., had committed rape on Smti Albina Bhadra aged about 16 years), daughter of informant- Sri Narayan Bhadra, giving false promise to marry her, and thereby committed an offence punishable under section 376 of the IPC, as alleged?
- ii) Whether the accused persons deceitfully caused the victim girl Smti Albina Bhadra, whom you did not marry, to believe that she was married to you, and in that belief, to cohabit with you or have sexual intercourse with you, and thereby committed an offence punishable under section 493 of the IPC, as allegd?
- iii) Whether the accused persons had cheated the victim girl Smti Albina Bhadra by dishonestly inducing her to deliver the

property belonging to her name to you (or to make, alter or destroy the whole or any part of a valuable security or anything signed or sealed, which is capable of being created as valuable security), and thereby committed an offence punishable under section 420 of the IPC, as alleged?

(iv) Whether the accused person, on the same date, time and place, after inducing the victim girl, had committed penetrative sexual assault on her person, and thereby committed an offence punishable under section 4 of POCSO Act, as alleged?

DISCUSSIONS, DECISION AND REASONS THEREOF:

- 6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.
- 7. PW.1, Smti Atuary Verla @ Vedra (wife of informant), stated that the victim girl is her daughter. She knows the accused person. The occurrence took place about one year back. The accused person caused pregnancy of his victim daughter and later on, a male child was born to her said daughter, who is now one year old. Her victim daughter along with her child is staying in her house at present. The present age of her victim daughter is about 15/ 16 years. Her husband lodged the ejahar in connection with the alleged occurrence at the P.S. Police got the victim girl medically examined and got her statement recorded in the Court.
- 8. PW.2, Dr. Pinchana Namchum (M/O), stated that on 01.06.2016, she was serving as Medical & Health Officer-I at North Lakhimpur Civil Hospital and on that day, at about 3:00 p.m., on that day, she medically examined the victim (PW4), daughter of Sri Narayan Bhadra, resident of Silanibari T.E., P.S.- North Lakhimpur and on examination she found as follows:-

Relevant Medical history:- According to the victim girl, she had sexual intercourse for many times with her lover Puna Behera since December, 2015 and since that she has become pregnant.

Findings of Medical examination:

- 1. Identification mark: A back spot on right side of face.
- 2. Height & weight :- 4 ft. & 45 kg.
- 3. General configuration : Young.
- 4. Teeth : 28 Nos. in total.5. Breast : developed.
- 6. (i) Axillary hair : present
 - (ii) Pubic hair : present.
- 7. Private Parts:
 - (i) Vulva : healthy.
 - (ii) Vagina : Normal admits three fingers.
 - (iii) Hymen : absent.
 - (iv) Uterus: As USG report done on 1.6.2016 at Meri Ultra sound and X-ray, a single living foetus in the gravid uterus in vertex of about 16 weeks size.
- 8. Laboratory examination for spermatozoa detection: No spermatozoa seen (Slide No.94/ 01.6.16).
- 9. Ossification test for age determination: Present age of the person concerned is above 15 years and below 17 years. (X ray No.R.972, N.L.C.H.).
- 10. External injury : No external injury over the private parts and other parts of her body.

<u>Opinion</u>: No evidence of recent sexual intercourse. She is having pregnancy of 16 weeks. Her age is above 15 years but below 17 years.

Ext.2 is her medical report and Ext.2 (1) is her signature thereon.

9. PW.3, Sri Narayan Bhadra (informant cum father of victim), stated that he knows the accused person. The occurrence took place about 2 years back. There was love affair between the accused person and his daughter. Despite giving promise, the accused person did not marry his daughter and so, he lodged this case against him.

The accused person never did any bad acts upon his daughter. His victim daughter also has not disclosed as from whose side she became pregnant. Ext.4 is the ejahar lodged by him and Ext.4(1) is his signature thereon.

- 10. PW.4, the victim girl, stated that the informant is her father. She knows the accused person. She also stated that despite giving promise to marry her, the accused person did not marry her and so, her father lodged this case against the accused. The accused person never did any bad acts upon her. She does not know as to from whose side she became pregnant.
- 11. PW5, Iswar Bhadra, stated that he knows both the parties. The occurrence took place about 2 years back. There was love affair between the accused and the victim. Other than this, he knows nothing.
- 12. PW6, Sri Rajesh Barla, stated in the same tune as stated by PW5.

Appreciation of evidence: (Offence u/s- 376 of IPC)

13. Here, the victim girl (PW4) is the prime witness in the instant case. Her evidence is that she had love affairs with the accused person prior to the alleged incident and due to not marrying her by the accused person, her father lodged this case only on suspicion against the accused person.

During cross, PW4 (victim girl) stated that she has no any allegation against the accused person. She gave her statement before the Court as per instruction of the police.

Thus, it is seen that the victim girl in her deposition nowhere uttered a single word that the accused committed rape on her.

Rather, she stated that she has no allegation against the accused.

- 14. The version of the informant, father of the victim girl (PW3) is that the accused person did not marry his daughter though they had love affairs between them. The accused person never did any bad acts upon his daughter.
- 15. PW3, PW5 and PW6 are not eye witnesses to see the occurrence. They do not support at all the prosecution case.
- 16. PW2 is the M/O. She found no recent sexual intercourse on the victim (PW4).

17. **Offence u/s- 493 of IPC.**

There is no evidence on record to show that the accused had cohabited with the victim (PW4) with a false promise to marry her.

18. **Offence u/s- 420 of IPC.**

Prosecution witnesses did not state that accused cheated the victim (PW4) in any manner.

19. **Offence u/s- 4 of POCSO Act.**

The prosecutrix (PW4), in her deposition nowhere stated that the accused person had committed any sexual assault on her person. Rather, she stated that the accused person did not commit any wrong upon her. Her father lodged this case, due to not getting marry her by the accused person.

PW3, PW5 and PW6 do not support at all the prosecution case.

PW2, the M/O, found no any evidence of recent sexual intercourse on the victim (PW4).

It is thus, seen that the ingredients of offence u/s- 4 of POCSO Act are lacking in this present case.

- 20. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s-376/493/420 of IPC, R/w- Sec. 4 of POCSO Act against the accused person beyond all reasonable doubts. Hence, I acquit him from the said offences.
- 21. The accused person is set at liberty forthwith.
- 22. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 7^{th} day of January, 2019.

(P.C. Kalita)
Addl. Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita) Addl. Sessions Judge (FTC), Lakhimpur, North Lakhimpur.

Transcribed & typed by me: Sri D. Chetia, (Steno)

APPENDIX:

Prosecution witnesses:

PW.1, Smti Atuary Verla @ Vedra

PW.2, Dr. Pinchana Namchum

PW.3, Sri Narayan Bhadra

PW.4, the victim girl

PW5, Iswar Bhadra

PW6, Sri Rajesh Barla,

Prosecution exhibits:

Ext. 1- Statement u/s- 164, Cr.P.C.

Ext.2 - Medical report

Ext.3 - Ultrasound report.

Ext.4- Ejahar.

<u>Defence witnesses:</u>

Nil.

<u>Defence exhibits:</u>

Nil

(P.C. Kalita) Addl. Special Judge (F.T.C), Lakhimpur, North Lakhimpur.