HEADING OF JUDGMENT IN SESSIONS CASE

District :- Goalpara.

IN THE COURT OF SPECIAL JUDGE, GOALPARA.

Present:- Sri S. Hazarika, A.J.S.

Special Judge, Goalpara.

Spl. Case No. 22/2018. U/s.4 of the POCSO Act.

In connection with GR Case No.1967/18.

State -vs-

1. Ahar Ali

..... Accused.

Ld. Advocates appeared:-

For the Prosecution :- Sri S. Sarman, Special Public prosecutor.

For the accused :- Mr.Sofiur Rahman & Billal Hussain, Advocates

Date of evidence : - 11/04/2019 & 04/04/2019.

Date of argument :- 12/04/2019

Date of judgment : - 26/04/2019

<u>JUDGMENT</u>

1. The prosecution case in brief is that the informant Fulbar Ali lodged an F.I.R. wherein he alleged that his daughter is a minor girl aged about 14 years. On 31/07/2018 at around 10:00 A.M. the accused being next door neighbour of his daughter to his home and on entering the house the accused closed the door and pushed the victim into the bed. Thereafter,

committed rape upon her. As the prosecutrix raised hulla the accused persons named in the F.I.R. fled away from the P.O. The F.I.R. was lodged with O/C of Mornoi PS and the present case was registered by O/C, U/S.120(B)/417 IPC read with section 4 of the POCSO Act. The victim was sent to Court for recording her statement U/S.164 Cr.P.C. The victim was medically examined and the report was collected. The witnesses were examined. The accused was arrested and he was forwarded to Court. After completion of investigation the I/O submitted Charge Sheet U/S.4 of the POCSO Act.

2. The present case was later on, registered and the case was transferred to this Court to hold the trial. The copies of relevant documents were furnished and upon hearing both parties and considering the materials on record, this Court was pleased to frame charge U/S.4 of the POCSO Act against the accused. The contents of the charge was read over and explained, to which, the accused pleaded not guilty and claimed to be tried.

3. POINT FOR DETERMINATION IS:

- (i) Whether the accused on 31/07/2018 at 10:00 A.M. at village Lewabari, Futuripara committed penetrative sexual assault on a minor girl and thereby committed an offence punishable U/S.4 of the POCSO Act?
- **4.** I have heard submissions of both parties and also gone through the evidence on record.

5. <u>DISCUSSIONS, DECISIONS AND RESONS THREOF</u>:

PW1 stated that he is the informant of the case and he does not know the accused. The victim is his daughter. At the time of incident his daughter was aged about 15 years. Six months earlier, at around 10:00 A.M, the occurrence took place. At that time he was in the market and his wife called him on the phone and asked him to come home. On his return, he saw many persons have gathered at his house. On reaching the P.O. he came to know that the villagers have apprehended the accused on suspicion. He was caught as he was talking with his daughter. As per version of the public he lodged the F.I.R.

6. PW2 is the prosecutrix who stated that the informant is her father and he know the accused. One year back she went to the house of the

accused at 10:00 A.M and they were talking to each other. Her uncle saw her. The matter was informed to her mother. For this incident, her father had lodged the F.I.R. The accused had not done anything with her. Later on, she gave statement in the Court. Ext.1 is the statement and Ext.1(1) is her signature.

- 7. On examining the evidence of PW1, it transpires that at the time of incident he was in the market and his wife called him back. On reaching home, he saw a big crowd and as per version of the public, he lodged the F.I.R. The allegation against the accused is that he had committed penetrative sexual assault upon the prosecutrix. The informant in his evidence remained silent regarding any sexual assault or harassment given by the accused to the prosecutrix. Further, his evidence clearly shows that he lodged the F.I.R. as he was told by public who apprehended the accused. In a case of present nature, the evidence of the prosecutrix is very vital as generally in such incident there may not be any eye witness. prosecutrix in her evidence only stated that she went to the house of the accused as they were having conversation. Her uncle saw them and accordingly, her father lodged the F.I.R. The prosecutrix in her evidence also remained silent that the accused had done anything bad things with her. She categorically in her evidence stated that accused had done any thing with her. The witness proved her statement Ext.1 but in her cross-examination she gave her statement as told by the public.
- **8.** From the evidence of the informant and the prosecutrix, it clearly transpires that the witnesses did not implicate the accused and there is nothing to hold that the accused had done anything with the prosecutrix. As the prime witness did not support the case and therefore, there is nothing to hold that the accused had committed the offence for which he is facing trial.
- **9.** In the result, the prosecution has failed to prove the charge against the accused and the accused deserves to be acquitted and

accordingly, he is acquitted.

10. The bail bond of the accused stands cancelled after six month from the judgment.

Given under my hand and seal of this Court on this **26th day of April, 2019.**

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

(Sri S. Hazarika, AJS,) Spacial Judge, Goalpara.

Special Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara.

APPENDIX Special: 22/2018.

PROSECUTION WITNESSES:-

PW1 Informant.

Pw2-Prosecutrix.

PROSECUTION EXHIBITS:-

Ext.1 -Statement of the victim U/S.164 Cr.P.C.

DEFENCE WITNESS:

NIL

DEFENCE EXHIBITS:-

NIL

(S. Hazarika, AJS)
Special Judge,Goalpara.