District-HOJAI.

IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE: FAST TRACT COURT: HOJAI, SANKARDEV NAGAR.

Present: N. Senabaya Deori, A.J.S Addl. Dist. & Sessions Judge, Hojai.

Spl. POCSO Case No. 15(N)/2018

U/ss. 376/511 IPC r/w s-4 of POCSO Act.

State

Vs.

Sri Yadav Biswas,

S/o, Sri Aimon Biswas,

R/o, Pub Sulmarijan

P.S., Hojai, Dist. Hojai, Assam.

..... Accused Person.

Charge framed on : 05/07/18,

Prosecution Evidences recorded on : 17/07/18,

Argument heard on : 30/07/18, Judgment delivered on : 30/07/18,

Ld. Counsel for the State : Sri Amar jyoti Saikia,

Addl. P.P. Hojai.

Ld. Counsel for the Accused person: R. Seal, S. Chakravorty.

Advocate, Hojai Bar.

I U D G M E N T

This case arose out of Hojai P.S. Case No. 583/2017 u/ss. 376/511 IPC r/w s-4 of POCSO Act upon the gist of the facts stated in the FIR which has set this criminal case in motion against accused person.

2. The prosecution version, in short campus, is as follows: - An Ejahar was lodged by one Pradip Biswas alleging that on 05-09-17 at about 3 p.m. while his

Sister Mampi Biswas and his aunty were taking out vegetables from the River side then the accused person came from behind and grasps his sister and dragged her to the River side and touches her private parts. Upon making screaming, some people came and at that moment, the accused person tried to strangulate and pushed her into the River. Hence, the prosecution case against the accused person.

3. On receipt of the *Ejahar* the I/O visited the place of occurrence and recorded the statement of the witnesses u/s-161 Cr. P.C. and prepared the case diary u/s-172 Cr.P.C. Having found materials against accused person in the Case Diary, the I.O. submitted charge sheet against them under Sections-376/511 IPC r/w s-4 of POCSO Act to face the trial before the court. During trial of the case, accused person entered appearance before the court and the relevant copies were furnished to them u/s-207 Cr.P.C. and the charge u/ss. 376/511 IPC r/w s-4 of POCSO Act were framed against accused person and the contents of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. POINTS FOR DETERMINATION:-

- (I) Whether the accused person on 05-09-17 at about 3 p.m. committed rape upon the victim girl, as alleged?
- (II) Whether the accused person on 05-09-17 at about 3 p.m. attempted committed rape upon the victim girl, as alleged?
- (III) Whether the accused person on 05-09-17 at about 3 p.m. committed sexual assault upon the minor victim girl, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF:-

- 5. In the instant case, the prosecution side examined as many as 2(Two) numbers of witnesses namely, Prodip Biswas (P.W.-1) and Mampi Biswas as P.W.-2, whereas, the accused person has declined to adduce any evidence for his defence while recording his statement under section-313 Cr. P.C.
- 6. In the evidence of P.W.-1, Prodip Biswas is to the effect that he is the informant of this case and Victim Mampi Biswas is his sister. The occurrence took place at about 1 year ago. His sister Mampi Biswas on

the relevant day of occurrence went to their paddy field situated nearby a river. She saw that the accused Jadav Biswas when she attended the call of nature. In this regard while his sister opposed him then accused abused his sister. Regarding he lodged Ejahar against the accused. Ext— 1 is the FIR and Ext-1(1) is his signature. Now the matter has been settled amicably between them. Accused person is their relative. He has no objection if the accused is acquitted by the Hon'ble Court from this case. Similarly, the victim, P.W- 2, Mampi Biswas stated the Informant is his brother. Accused Jadav Biswas is his uncle. The occurrence took place at about 1 year ago while she went to their paddy field along with her relative Smt. Rusmani Biswas nearby a river. At that time, he saw the accused attended the call of nature near paddy field. She opposed him but he abused her. Subsequently, informed the matter to her brother and he lodged the Ejahar. Police brought him to the court for recording his statement. Ext—2 is his statement and Ext—2(1) and 2(2) are her signatures. Now, the matter has been settled amicably between them. Accused person is her relative. She has no objection if the accused is acquitted by the Hon'ble Court from this case.

- 7. Ld. Defence Counsel humbly submitted that every accused is presumed to be innocent unless the guilt is proved. The courts must be on guard to see that merely on the application of the presumption; the same may not lead to any injustice or mistaken conviction. In the present case, there is no whisper of evidence on record implicating the accused in perpetration of alleged offence and thus, accused person deserve acquittal forthwith.
- 8. On careful scrutiny of evidence of record, it has come to fore that one Pradip Bisawas alleging that on 05-09-17 at about 3 p.m. while his Sister Mampi Biswas and his aunty were taking out vegetables from the River side then the accused person came from behind and grasps his sister and dragged her to the River side and touches her private parts. Upon making screaming, some people came and at that moment, the accused person tried to strangulate and pushed her into the River. This fact has not been corroborated by the evidence of informant and the victim girl.

There is no whisper of evidence come to fore that the accused person on 05-09-17 at about 3 p.m. committed rape upon the victim girl, or attempted committed rape upon the victim girl. There is also no evidence that the accused person on 05-09-17 at about 3 p.m. committed sexual assault upon the minor victim girl. That being the evidence of prosecution side, it can safely be held that the prosecution has miserably failed to bring home the offences against the accused person beyond all reasonable doubt and thereby, the accused person is undoubtedly entitled to the benefit of doubt.

9. In the totality of evidence on record and assessment thereof, this court arrived at the conclusion that the prosecution has failed to prove the alleged offence beyond all reasonable doubt against the accused person. Therefore, this court holds the accused Yadav Biswas not guilty of the offence under sections-376/511 IPC r/w s-4 of POCSO Act and he is acquitted and set at liberty forthwith.

Bailbond against the accused person shall stand canceled and the bailor is released from his liabilities of the bailbond.

Given under my hand with the seal of this court on this 30th day of July' 2018.

(N. Senabaya Deori)
Addl. Dist. & Sessions Judge, Hojai.

<u>APPENDIX</u>

1. Prosecution Witnesses:-

P.W.-1, Prodip Biswas

P.W.-2, Mampi Biswas

2. Defence witnesses:-

Nil

3. Prosecution Exhibits:-

Ext.-1, Ejahar,

Ext.-2, statement recorded under section-164 Cr. P.C.

4. Defence Exhibits:-

Nil

(N. Senabaya Deori)

Addl. Dist. & Sessions Judge, Hojai.