IN THE COURT OF THE SPECIAL JUDGE, NAGAON. ASSAM

PRESENT: Smti. H. D. Bhuyan,

Special Judge,

Nagaon.

SPECIAL (T-2) CASE NO. 30(N) OF 2014

Under section 376(2)(i) of I.P.C. R/W Section 4 of POCSO Act G.R. Case No. 3954 of 2014.

State of Assam Complainant

-Versus -

Rustam Ali Accused Person

ADVOCATES WHO APPEARED IN THIS CASE

For the Complainant : Smti. B. Phukan,

Special Public Prosecutor.

For the accused : Sri P. Bora,

Sr. Advocate.

Date of evidence : 28-04- 2015

& 22-06-2015.

Date of Argument : 22-06-2015.

Date of Judgment : 22 - 06-2015.

J U D G M E N T

- 1. The prosecution case in nutshell is that on last 17-10-2014, the informant, namely, the victim "X", resident of village Khanatup, under Rupahihat Police Station had lodged FIR before the O/C of Rupahihat P.S. to the effect that on last 12-10-2014 at about 7 p.m., the accused, namely, Rustom Ali who is her own maternal uncle induced her to go to his house by falsely promising her to arrange her marriage with a boy and on that occasion, made her to sit in his house till 10 P.M. of the night and then, informed her that the said boy did not come to his house and thereby, induced her to stay in his house for the night and on that night, the said accused person committed rape on her for two times and thereafter, at late hours of the night, he left her in the courtyard of her another maternal uncle Abu Bakkar Siddique and in the morning, she informed her family members about the incident. Hence, the F.I.R.
- 2. On receiving the F.I.R., the police of Rupahihat P.S. registered the Rupahihat P.S. Case No. 553/14 U/S 376 of I.P.C. R/W section 4 of the Protection of Children from Sexual Offences Act, 2012 against the accused Rustam Ali and started usual investigation thereon. Upon completion of the investigation, police laid charge sheet in the case U/S 376 of I.P.C. R/W section 4 of the Protection of Children from Sexual Offences Act, 2012. Thereafter, the case was received in this Court for trial.
- 3. On being produced in this Court, the accused was furnished with all the necessary copies as required U/s. 207 of Cr.P.C by me and I also framed a formal charge U/S 376(2)(i) of I.P.C. R/W section 4 of the Protection of Children from Sexual Offences Act, 2012 against accused Rustam Ali after perusal of police papers U/s. 173 of Cr.P.C. and also after hearing the learned counsels for both sides. The charge was also read over and explained to the accused person and he pleaded not quilty and claimed to be tried.
- **4.** During trial of the case the prosecution side examined altogether 3 PWs while the defence side did not adduce any evidence.

5. After hearing arguments for both sides, I hereby proceed to deliver my judgment in this case.

6. Now, the point for decision before me are as follows:-

- i) Whether on last 12-10-2014 at about 10 p.m. at village Khanatup under Rupahihat P.S., the accused person committed rape on the victim girl 'X', a minor girl aged about 14 years and thereby committed an offence punishable U/s. 376(2)(i) of I.P.C.?
- ii) Whether on the same day, time and place, the accused person did an act with sexual intent which involves penetrative sexual assault upon a minor girl aged about 14 years, namely, the victim "X" and thereby committed and offence U/S 4 of the Protection of Children from Sexual Offences Act, 2012?

7. My findings and reasons thereof are as follows :-

During trial of the case the prosecution side examined altogether 3 PWs while the defense side did not adduce any evidence. Now, let me consider what are the evidence adduced by these PWs.

P.W. 1 is the victim girl namely 'X'. She deposed before this court that she filed this case against accused Rustam Ali. Her further evidence is that the occurrence took place before many days and she has not filed this case on her own but Barek and Mustu asked her to file this case and hence, she filed this case against Rustam Ali. She again deposed that accused Rustom is her own maternal uncle and he did not do anything with her and her signature in the ejahar was obtained forcefully by Barek. In her cross examination, this P.W. deposed that Barek is her another maternal uncle and there is land dispute between Barek and Rustom for which Barek and Mustu took her to the police station and they with police personal obtained her signature on the F.I.R. forcefully by threatening her.

P.W.2, Musstt. Kamala Khatun is the mother of the victim 'X'. She deposed that accused Rustom is her own brother and occurrence took place

before one year back. Her further evidence is that the victim girl who is her daughter used to visit the house of accused person frequently as he is her maternal uncle and one day, her another brother Barek assaulted her daughter on the way to the house of the accused person and took her to the police station and filed a false case through her daughter against accused Rustam Ali while Rustom did not do anything with her daughter.

P.W.3 is doctor Kabita Baruah. This witness deposed in the Court that on last 17-10-2014, while she was Senior Medical and Health Officer at B.P.C. Hospital, on that day at about 1:45 P.M. examined the victim girl in reference to Rupahihat P.S. Case No. 553/14 U/S 376 of I.P.C. R/W section 4 of the POSCO Act, 2012 in presence of ANM Anu Nath and on examination found no sign of recent sexual intercourse, no injury mark on her private parts of the body and also found no sign of pregnancy of the victim and found her age to be above 15 years and below 16 years as per radiologist opinion.

8. Thus, after careful analysis of the evidence in record, it appears that none of the P.W.1 and P.W.2 did try to implicate the accused person with the alleged offence U/s.. 376(2)(i) of IPC R/W section 4 of the Protection of Children from Sexual Offences Act, 2012. They are the material witnesses of the occurrence. The PW 1 who is the victim girl adduced specific evidence that she has not filed this case on her own but Barek and Mustu by threatening her obtained her signature forcefully and lodged the false case through her against the accused while the accused Rustom who is her own maternal uncle did not do anything with her. The mother of the victim as PW 2 categorically stated in her evidence that accused Rustom is her own brother and the victim girl who is her daughter used to visit the house of accused person frequently and one day, another brother of this P.W. namely, Barek assaulted her daughter on the way to the house of accused and took her to the police station and filed a false case through her daughter against accused Rustam Ali while the accused did not do anything with her daughter. The P.W.3, who is the M.O. of the case also deposed that after examination of the victim in connection with the case, she did not find any sign of recent sexual intercourse or any injury mark on the private parts of the body of the victim or any sign of pregnancy of the victim girl. That being the position, I have seen that there is no iota of evidence at all to see that the

accused Rustom Ali has committed offences U/s. 376(2)(i) of IPC R/W section 4 of the Protection of Children from Sexual Offences Act, 2012 and the prosecution has measurably failed to establish a case U/s. 376(2)(i) of IPC R/W section 4 of the Protection of Children from Sexual Offences Act, 2012 against the accused person beyond all reasonable doubt.

O R D E R

9. In the result, the accused Rustom Ali is not found guilty for committing offence 376(2)(i) of IPC R/W section 4 of the Protection of Children from Sexual Offences Act, 2012. Hence, he is acquitted of the offence and set at liberty forthwith.

The accused person being on bail, his bail bond shall extend to another six months from today.

The judgment is pronounced in an open court and enclosed with the case record.

Given under my hand and seal of this court, I have signed and delivered this judgment on this 22^{nd} day of June, 2015 at Nagaon.

(Mrs.H.D. Bhuyan.)
Special Judge,
Nagaon.

Dictated and corrected by me.

(Mrs.H.D.Bhuyan) Special Judge, Nagaon.

Typed by me

(N.Rajkhow) Steno.