Present :- Mr. R.A. Tapadar, AJS

Date: **08.01.2020**.

#### SPECIAL CASE NO. 101 of 2018

(Under Section 376(2)(i) of I.P.C.

& Sec. 4 of Protection of Children from Sexual Offences Act, 2012.

The State of Assam -Versus-

Md. Hamid Sheikh

....Accused Person.

### **APPEARANCE**

For the State......Mr. Sudhaman Ch. Ray, learned Addl.P.P.

For the Defence ....Mr. Mostafa Ali Ahmed, learned Advocate.

Date of Framing Charge: 08-01-2019

Evidence recorded on :-20.03.2019 & 11.04.2019.

Argument heard on :-03.01.2020

Judgment delivered on :- 08.01.2020.

### J U D G M E N T

- 1 Md. Hamid Sheikh (hereinafter referred to as "accused") is before this court facing accusation for the commission of offence U/s.376(2)(i) of I.P.C. & Sec. 4 of Protection of Children from Sexual Offences Act, 2012.
- 2. The prosecution case, in brief, is that the informant Mustt. Asma Bibi lodged an FIR with the In-Charge, Daobhangi Police Petrol Post under Gauripur P.S. on 13.5.18 and *inter-alia* stated that on the last night at about 8-30 P.M, her 15 years

old daughter Miss. 'X' went to fetch water from the tubewell, at that time, accused Abdul Hanif and his father Moinul Hoque hatched conspiracy, abducted her minor daughter by gagging her mouth, carried her on shoulder, took to a nearby bamboo bushes and committed rape upon her. When the informant searched her daughter, she found her daughter in a naked condition and when the accused persons saw the informant, they fled away. The informant lodged the FIR and prayed for action against the accused persons.

- 3. Based on the FIR, police registered Gauripur P.S. Case No.544/18 U/s.120(B)/342/376/34 I.P.C and Sec.4 of POCSO Act, 2012 and commenced the investigation of the case.
- 4. The police after investigation, submitted charge-sheet against the accused person U/s. 120(B)/342/376/34 I.P.C and Sec.4 of POCSO Act, 2012. When summons was issued from the court, the accused person entered his appearance. The relevant copies were furnished to the accused person.
- 5. The charge U/s. 376(2)(i) of I.P.C. & Sec. 4 of Protection of Children from Sexual Offences Act, 2012 was framed against the accused person. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 6. The prosecution in order to establish the guilt of the accused person examined as many as four witnesses. The statement of the accused U/s.313 Cr.P.C was recorded. The accused person pleaded his innocence.
- 7. Heard both sides.

#### 8. POINTS FOR DETERMINATION:

- i) Whether the accused person on 12.05.2018 at about 8-30 PM committed rape on the daughter of the informant under the age of sixteen and thereby committed an offence U/s.376(i)(2) of I.P.C.
- ii) Whether the accused on the same date and time committed penetrative sexual assault on the minor daughter of the informant and thereby committed an offence U/s.4 of POCSO Act, 2012.

### 9. **DISCUSSION, DECISION AND REASONS THEREOF**:

The charges against the accused are that the accused person committed rape as well as penetrative sexual assault on the minor daughter of the informant.

PW-1 'X' in her evidence stated that the incident occurred about 6/7 months ago. PW-1, the victim in her statement stated that on the date of the incident, she was speaking with the accused person and when her mother saw, she lodged the FIR but the accused person did not commit anything.

PW-2 Asma Bibi, the mother of the victim in her evidence stated that her daughter was speaking with the accused and when she saw, she suspected and lodged the FIR.

PW-3 & 4 Awal Ali and Tarabhanu Bibi in their evidence stated that they do not know about the facts of the incident.

10. When the evidence on record taken as a whole, it is evident that ingredients U/s. 376(2)(i) of I.P.C. & Sec. 4 of Protection of Children from Sexual Offences Act, 2012 are totally lacking as such, I do not find it to convict the accused person as the prosecution evidence does not establish the guilt of the accused person. Accordingly, the accused person is acquitted from the charge U/s. 376(2)(i) of

4

I.P.C. & Sec. 4 of Protection of Children from Sexual Offences Act, 2012 and set at

liberty, forthwith. His bail bond shall remain in force for a period of six months in

terms of Sec.437A Cr.P.C.

Given under my hand and seal of this court on this  $8^{\text{th}}$  day of January,2020 at

Dhubri.

Dictated & Corrected by me

Mr. R.A. Tapadar,AJS

Special Judge, Dhubri

Special Judge, Dhubri

# APPENDIX

# A. **Prosecution Witnesses:**

PW- 1- 'X'

PW- 2- Mustt. Asma Bibi

PW-3 Md. Awal Ali

PW- 4- Mustt. Tarabhanu Bibi.

# B. **Documents Exhibited by Prosecution:**

Ext-1 victim's statement U/s.164 Cr.P.C.

C. **Defence Witnesses** :- Nil

D. **Defence Exhibit** : Nil

Mr. R.A. Tapadar, AJS Special Judge, Dhubri