IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.03 of 2019

(U/S 448 IPC and Sec. 4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of AssamComplainant.

-Versus-

Riyazul Mazumder......Accused person.

Charge framed on:-.....7/2/19

Argument heard on:-19.8.19.

Judgment pronounced and delivered on:-.....19.08.19.

<u>Counsel Appeared:</u>

For the State : Mr. R.M. Das, Ld. P.P.

Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr. A.H. Laskar., Advocate.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 27.11.2018 the

informant Md. Jalal Uddin lodged an FIR with the O/C of Silchar P.S. stating the facts that prior to the filing of ejahar the accused taking the advantage of being the son in law of the informant used to come to the house of the informant and had sexual intercourse with Farida Begum, the minor daughter of the informant by inducing her continuously and also had sexually assaulted her.

- 2. On receipt of the FIR, case was registered vide Silchar P.S. Case No.4063/18 U/S 448/376/506 IPC read with Section 4 of POCSO Act. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The victim girl was also sent to SMCH, Silchar for medical examination. The investigating officer visited the place of occurrence and prepared a rough sketch map. He also recorded statement of the witnesses and subsequently after completion of investigation submitted charge sheet against accused Bishal Karmakar U/S 448/376 IPC read with Section 4 of POCSO Act.
- 3. The offence Sec.4 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial after filing of the charge sheet. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 448 IPC and Section 4 of POCSO Act was framed by this court against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether the accused committed house trespass by entering into the house of the informant with intent to commit rape on the minor daughter of the informant, as alleged?
- (2) Whether the accused prior to lodging of the FIR committed penetrative sexual assault on the victim girl in the house of the informant,

as alleged?

- 4. From the prosecution side as many as 2 witnesses have been examined including the informant and the victim. The defence side has examined none. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 5. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 6. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in point for determination.
- 7. PW.2 Farida Begum is the victim of this case and she deposed in her deposition that the accused Riaj Uddin is the husband of her elder sister. The accused had gifted her one mobile phone and sh used to talk with him over phone. As she used to talk with the accused and as such, her father on suspicion has lodged one FIR resulting to the instant case. In her cross examination she stated that she deposed in her 164 Cr.P.C. statement as per instruction of other people. She does not have any grievances against the accused person.
- 8. PW.1 , Jalaul Uddin Ahmed the informant of this case deposed that the accused used to talk on mobile phone with her younger daughter Farida Begum. On suspicion he lodged one FIR against the accused with the Silchar PS. In his cross examination he stated that he cannot remember as to what is being written in the FIR.He has no grievances against the accused.
- 9. So, from the evidence of prime witness i.e. the victim PW.2 it appears that she did not at all implicate the accused person in the

Spl.(POCSO) Case No.3/19

- alleged offence of crime. Rather she stated in her cross examination that she has no grievances against the accused and out of suspicion this case was lodged against the accused. PW.1 also did not implicate the accused and stated that this case was lodged on suspicion.
 - 10. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 448 of IPC and Sec. 4 of POCSO Act against accused Riyazul Mazumder.
 - 11. In view of the above, accused is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

Judgment is pronounced and delivered in the open court on this the 19^{th} day of August, 2019.

Dictated and corrected by

Special Judge, Special Judge, Cachar, Silchar. Cachar, Silchar.

Transcribed by K. Bhattacharjee,

Stenographer Gr. I

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 3 of 2019.

APPENDIX

(A) <u>PROSECUTION WITNESSES:</u> -P.W. 1 — Jalaluddin Ahmed P.W. 2 — Farida Begum.

(B) <u>DEFENCE WITNESSES</u>: - NIL (C) <u>PROSECUTION EXHIBITS</u>: -

Ext. 1 – FIR.

Ext. 2 – statement. (E) <u>DEFENCE EXHIBITS</u>: - NIL. (F) <u>COURT EXHIBITS</u>: - NIL.

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.