IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.20 of 2017

(U/S 4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

Counsel Appeared:

Argument heard on:-10.07.19.

Judgment pronounced and delivered on:-.....2.08.19.

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

JUDGMENT

1. The prosecution case, in brief, is that on 29.05.2017 the informant Bappon Kondo lodged an FIR with the O/C of Udharbond P.S. stating the facts that prior to the four months of filing of the FIR accused Bishal Karmakar taking the advantage of absence of the informant and his other inmates of the house at about 11 p.m. at night forcibly entered into the house of the informant. Thereafter the said accused gagging the mouth of Puja Kondo who is the minor sister of the informant and threatening her of her life committed rape on her. Thereafter, after one month when she felt pain on her stomach she apprised the same to the accused and then the accused with the help of co-accused Sania Goala administered medicine to her for abortion. Thereafter on 12/05/17 the accused along with other co accused persons took the victim to the hospital and got done sonography there. Thereafter co accused Kamala Chanda took the victim in a house at Durgapally where she stayed for two days and thereafter when the victim came to her house from the said house her pregnancy was terminated.

On receipt of the FIR, case was registered vide Udharbond P.S. Case No.109/17 U/S 448 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 IPC read with Section 4 of POCSO Act.

2. The offence 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 Section 4 of POCSO Act was framed by my ld. predecessor in office against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.

- 3. Now, in the present case the points to be decided are :-
- (i) Whether four months prior to lodging of the FIR dtd.29/05/17 one day at about 11 p.m. the accused committed penetrative sexual assault on the victim girl in the house of the informant, as alleged?
- 4. From the prosecution side as many as 8 (eight) witnesses have been examined including the M.O. The defence side has examined none. Statement of the accused was recorded U/S 313 Cr.P.C. The defence plea is total denial of the allegations. I have gone through the entire evidence on record and have also heard the argument put forwarded by the learned counsel for both the parties. Let me now discuss the evidence below in details:
- 5. PW-3 Puja Kondu is the victim in the case. She deposed in her evidence that about 5 / 6 days before the occurrence she was acquainted with the accused Bishal Karmakar and thereafter accused used to talk to her in the street and thereafter she felt stomach pain after seven days and suffered vomiting. Then the informant Bappan Kondo who is the brother of the victim suspected that she had been carrying pregnancy by the side of the accused and accordingly he lodged an ejahar. PW-3 does not know her

age.

In her cross examination, PW-3 deposed that she did not have any love affairs with the accused and also had no sexual relation with him. One day when she felt pain on her stomach her elder brother Bappan on doubt lodged this FIR.

PW-1 Bappon Kondo who is the informant of this case deposed in his evidence without any implication to the accused that his sister victim Puja Kondo had love affair with the accused and at the time of incident his sister was aged 18 years. PW-1 lodged FIR with the police putting his thumb impression.

In his cross examination PW-1 admitted that he contents of the FIR.

- 6. PW-2 Rita Kunda, sister in law of the victim and the wife of the informant deposed in her deposition that the accused and the victim were in love with each other and one day the victim complained of stomach pain to which his husband suspected that she got conceived through accused Bishal for which he filed a complaint with the police stating that his sister had been impregnated by the accused and later from the examination of the doctor it revealed that she did not conceive at all. Defence declined to cross examine her.
- 7. PW-4 Mona Konda and PW-5 Phoolonti Konda deposed in their evidence in a similar manner without any implication to the accused that at the relevant time PW-3 was suffering stomach pain for which her brother PW.1 lodged an FIR against the accused out of suspicion that the accused made the victim pregnant.
- 8. PW.7 is the M.O. Dr. Mrs. Monalisa Dev has deposed in her evidence that she examined the victim on police requisition and the victim

gave history as that she was in relationship with the accused since last one year and the victim became pregnant and accused gave some abortificant medicine to eat to her and accused also forcibly made her to eat such medicines and the expulsions occurred in her home and her brother lodged the case as accused person were not contact with her.In her finding she opined that the age of the individual is above 18 and below 20 years, evidence of recent sexual penetration not detected, injury marks not detected on her person and genital except old hymeneal marks and signs of recent abortion is not detected as on date of examination.

- 9. PW-8 is the I.O who deposed that he accomplished all the routine works at the various stage of investigation viz drawing of sketch map, visiting of P.O. etc and recorded the statement of the witnesses and on his transfer he handed over the CD to the O/c Udharbond P.S. PW.6 SI A.Nathlaskar another IO submitted the charge sheet.
- 10. Summing up all the evidence on record and on appreciation over the same, it comes to the light that the prime witness, the victim girl PW-3 did not at all implicate the accused person in the alleged offence of crime. She only stated that her brother PW.1 lodged the case against the accused out of suspicion. Another principal witness of this case is the informant PW-1, who deposed that the victim was 18 years of age at the time of occurrence and she had love affairs with the accused. In his cross examination PW-1 deposed that he cannot say the contents of the FIR. From the evidence of PW.2, the wife of the informant, PW-4 and PW.5, it appears that the informant PW.1 lodged FIR against the accused out of suspicion only. So, from the above evidence it is clear that the case has been lodged against the accused out of suspicion. PW.7 the M.O. clearly opined that the victim is above 18 and below 20 years, evidence of recent sexual penetration not detected and no injury and sign of abortion

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detected. Though the medical officer in her deposition stated that victim in her history stated that the accused made her pregnant and accused gave her some abortificant medicines but in view of the above evidence, particularly, the evidence of victim and the findings of the medical officer herself, this piece of evidence cannot be helpful to the case of the prosecution. So it is crystal clear, that the case has been filed against the accused merely on suspicion and not to speak of other witnesses the victim PW.3 as well as the informant PW.1 who are the principal witnesses of this case did not at all implicate the accused in the alleged offence of crime.

- 11. Upon consideration of all above aspects, I hold that the prosecution has miserably failed to prove its case U/s 4 of POCSO Act against the accused Bishal Karmakar as leveled against him. Due to the dearth of evidence against the accused in the alleged commission of crime he deserves to be acquitted.
- 12. In view of the above, accused person is held not guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith. Bail bonds stand cancelled.

Independent is pronounced and delivered in the open court on this the 2^{nd} day of August, 2019.

Dictated and corrected by me

Sessions Judge, Cachar, Silchar.

Transcribed by K. Bhattacharjee,

Stenographer Gr. I

(Darak Ullah) Sessions Judge,

Cachar, Silchar.

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APPENDIX

(A) PROSECUTION WITNESSES: -		
P.W. 1	Bappon Kondo.	
P.W. 2	– Rita Kunda.	
P.W. 3	– Puja Kondu	
P.W. 4	– Mona Konda.	
P.W. 5	- Phoolonti Konda.	
P.W. 6	- SI A. Nathlaskar.	
P.W. 7	- Dr. M.Dev.	
P.W. 8	- SI M.U.Laskar.	
(B) <u>DEFENCE WITNESSES</u> : - NIL		
(C) PROSECUTION EXHIBITS: -		
Ext. 1	Charge sheet.	
Ext. 2	– Medical report.	
Ext.3	- FIR	
Ext.4	- Sketch map.	
Ext. 5	-Statement of the victim	
(E) <u>DEFENCE EXHIBITS</u> : - NIL.		
(F) COURT E	XHIBITS: - NIL.	
(G) <u>EXHIBITS PRODUCED BY WITNESSES</u> : - NIL.		

Special Judge, Cachar, Silchar.