

Special (POCSO) Case No. 24/2018.

(Under Sec. 4 of the POCSO Act.)

State

- Versus -

Sumon Uddin Barbhuiya

. Accused.

PRESENT: Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State :- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person :- Sri A.H. Laskar, Ld. Advocate.

Dates of recording evidence :- 06.03.2019 & 28.05.2019.

Date of recording statement u/s 313, CrPC :- 01.06.2019.

Date of Argument :- 01.06.2019.

Date of Judgment :- 01.06.2019.

JUDGMENT

The prosecution case, in brief, is that on 11.10.2018 the informant Rahim Uddin Laskar lodged an FIR with the O/c, Hailakandi Police Station alleging that the victim is his niece and the accused Sumon Uddin Barbhuiya assured her to provide job in his house and accordingly, on being asked by the accused, on 11.10.2018 at about 4 PM the victim went to his house and found the door of the house of the accused closed and when she started to return back, suddenly, the accused appeared there and taking the advantage of absence of other family members in the house, he forcefully dragged the victim in his house and committed rape on her and thereafter, the accused drove her out of his house by assaulting her physically.

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- On receipt of the ejahar, the same was registered as Hailakandi Police Station Case No. 832/2018 under Sec. 4 of the POCSO Act,2012 and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, recorded statements of witnesses, got the victim medically examined, go her statement recorded by Magistrate and subsequently, on completion of investigation having been found prima facie case, police laid the charge sheet against the accused person Suman Uddin Barbhuiya under Sec. 4 of the POCSO Act,2012.
- 4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charge has been framed against the accused person Sumon Uddin Barbhuiya under Sec. 4 of the POCSO Act. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined 3 Nos. of PWs including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person was examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- **7.** Heard argument of both sides. Perused the entire materials available on record.

SPECIAL JUDGE

POINTS FOR DETERMINATION:

Whether the accused person on 11.10.2018 in the Evening at about 4 PM in village Chandpur under Hailakandi PS committed penetrative sexual assault on the victim, as alleged and thereby committed an offence under Sec. 4 of the POCSO Act?

DISCUSSION, REASONS AND DECISION THEREOF:

9. The PW. 1, the informant Rahim Uddin Laskar has deposed that about 5 months back one day while he was in his work, his mother asked him to come house and on his arrival in the house, his mother reported him that the accused and his wife took his (PW.1) niece i.e. the victim to their house and they scuffled with her and also did bad acts with her and thereafter he lodged the FIR vide Ext. 1 and Exts. 1(1),1(2) and 1(3) are his signatures.

In cross examination, the witness has stated that he did not have any talk with the victim before filing the FIR.

The PW. 2, the victim has deposed that informant is her uncle and about 6/7 months back one day at about 4 PM, she was on the road and then the accused met her and told her that he would engage her in the household work as maid to the house of another person and accordingly, she went to the house of accused with him but the wife of accused rebuked her and then the accused caught her (the victim) hands and pushed her towards outside the house and thereafter, her uncle Rahim Uddin lodged the FIR. During investigation, police got her medically examined. Police also got her statement recorded by Magistrate vide Ext. 2, wherein Ext. 2(1) is her signature.

In cross examination, the victim has stated that since the wife of accused rebuked her, the accused dragged her towards outside as there was every possibility of any untoward incident. It is further stated by the victim that she made her statement before Magistrate on being tutored by his uncle and grandmother and she has got no allegation against the accused as he did not commit any bad act with her.

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The PW. 3, Fajal Uddin Barbhuiya has stated that on the

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relevant day, he was not in his home and thereafter, he heard that the family members of the victim filed rape case against the accused but he does not know anything about the occurrence.

- 12. In the instant case, though in the FIR there is incriminating materials against the accused but in the backdrop of the evidence adduced by the witnesses, it is revealed that nothing has come out to rope the accused person with the guilt of the alleged offence. The prime witness is the victim herself and her evidence bears much significance to prove the alleged commission of the crime. The victim in her evidence has unequivocally divulged that on the relevant day in the evening she went to the house of the accused person for the purpose of engaging herself as maid but the wife of accused rebuked her and then the accused pushed her towards outside of the house as there was every possibility of any untoward incident. The victim has also revealed that she has got no allegation against the accused as he did not commit any bad act with her and she made her statement before Magistrate on being influenced by her uncle and grandmother. So also the evidence of the informant transpires that he did not have any prior conversation with the victim before filing the FIR.
- the Prosecution witnesses has been able to implicate the accused person with the commission of the crime alleged, rather, the victim, who is the prime witness of the case has given clean chit to the accused saying that she does not have any allegation against the accused as he did not commit any bad act with her. As such, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.
- 14. Accordingly, the accused person Sumon Uddin Barbhuiya is acquitted of the offence under Sec. 4 of the POCSO Act and as such, he is set at liberty forthwith.
 - The bail bond of the accused person stands discharged.

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16. Send a copy of this judgment to the District Magistrate, Hailakandi.

17. The Special (POCSO) case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this the $\mathbf{1}^{st}$ day of June, 2019.

Special Judge, Hailakandi

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Dictated and corrected by me:

Special Judge, Hailakandi

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<u>Dictation is taken and transcribed by Baharul Islam Choudhury,</u>
<u>Stenographer Grade – I.</u>

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Appendix :-

Oral evidences :-

PW. 1, the informant Rahim Uddin Laskar.

PW. 2, the victim &

PW. 3, Fajal Uddin Barbhuiya.

Documentary evidences :-

Ext. 1- FIR.

Ext. 2- Statement of the victim recorded under Sec. 164, CrPC.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI