HEADING OF JUDGEMENT IN SPECIAL CASES:

DISTRICT: DHUBRI.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 21/2016

UNDER SECTIONS: 376 IPC

READ WITH SECTION 4 OF THE POCSO ACT.

STATE OF ASSAM VS. LUTFUR RAHMAN

PRESENT:- DIPAK THAKURIA,
SPECIAL JUDGE,
DHUBRI.

APPEARANCES:-

B. R. BASUMATARI, SPECIAL P. P. FOR THE STATE.
A. U. AHMED, ADV. FOR THE DEFENCE.

DATE(S) OF EVIDENCE:- 24-08-2016, 08-11-2017, 23-05-2018, 08-05-2019.

DATE OF ARGUMENT:- 04-07-2019.

DATE OF JUDGMENT :- 18-07-2019.

J U D G E M E N T

- **1.** Accused Lutfur Rahman stands trial for the offences punishable under section 376 IPC read with section 4 of the POCSO Act for allegedly committing rape or penetrative sexual assault on the minor daughter of the complainant on 21-02-2016 at village Bamundanga Pt. I under Agomoni police station.
- 2. The facts of the case, as revealed from the ejahar, in brief, are as follows:- that on 21-

02-2016 the complainant lodged a written ejahar at Agomoni police station stating that her 13 year 7 months old daughter who was a student of class VII is always being disturbed by the accused Lutfur Rahman when he meets her on the road and proposed to marry her. Her daughter did not disclose the facts to her. About three months back while she was not in her residence, the accused by force entered into her house and committed rape on her daughter. The accused threatened her daughter to kill if she disclosed the incident to anyone. So, her daughter did not disclose the same to her. Thereafter the accused repeatedly committed rape on her daughter. He promised that he would marry her and transfer landed property to her name. The complainant suspected the activities of the accused and one day she asked him not to visit her house. About two months back the accused entered into her house with a dao and asked her to go away from her house. On being protested, the accused attempted to assault her and then she lost her sense. Thereafter the accused committed sexual intercourse with her daughter. The accused threatened her daughter to kill them if she disclosed the incident to anyone. Her daughter conceived for two months. The accused did not accept her daughter and conspired to kill them.

- **3.** After receiving the ejahar Officer-in-charge of Agomoni police station registered a case as Agomoni P. S. Case No. 39/2016 under sections 447/325/376/506 IPC. Subsequently section 4 of POCSO Act was added.
- **4.** During investigation the accused was arrested and subsequently he was granted bail.
- 5. The investigating officer recorded the statements of witnesses under section 161 Cr. P. C. and statement of the victim was also recorded under section 164 Cr. P. C. By completing the investigation I. O. has submitted charge sheet against the accused person to prosecute him under sections 447/376/506 IPC read with section 4 of POCSO Act.
- **6.** Cognizance of the case was taken in the charge sheeted sections and copies were furnished to the accused.
- **7.** One of my learned predecessors after perusal the case record and case diary was pleased to frame charges against the accused under section 376 IPC read with section 4 of POCSO Act. Charges so framed were read over and explained to the accused which he pleaded not guilty and claimed to be tried.

- **8.** The prosecution examined six witnesses including medical and investigating officers and closed the evidence.
- **9.** After completion of the prosecution evidence, the statement of the accused was recorded u/s 313 Cr. P. C. by putting questions to him from all incriminating evidence appearing against him on record and thereby giving him an opportunity to meet the same. In response to which, the accused denied the allegations as well as evidence on record and also declined to adduce evidence in defence .
- **10.**Heard learned counsels appearing for the parties and perused the evidence on record.

FOLLOWING POINTS HAVE BEEN SET UP FOR DETERMINATION

Whether the accused three months prior to 21-02-2016 in the house of the complainant at village Bamundanga Pt. I under Agomoni police station committed rape on the minor daughter of the complainant and thereby accused is liable to be punished under section 376 IPC?

Whether the accused on the same day time and place committed penetrative sexual assault to the minor daughter of the complainant and thereby accused is liable to be punished under section 4 of the POCSO Act?

DISCUSSIONS ON THE POINTS FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASON:

11.In order to establish the charges framed against the accused, the prosecution has examined six witnesses. Among them P. W. 1 is the complainant and the mother of the victim girl. The complainant put her thumb impression in her ejahar. Her evidence shows that her daughter is a 13 year old girl. The accused whenever comes across to her utters obscene words to her and also exhibited obscene gesture to her and proposed to marry her, but she refused as her daughter was a minor. Her daughter confided her about the conduct of the accused. Unable to stop the accused repeating his conduct with regard to her daughter she reported the matter to police. The ejahar filed by the complainant has been exhibited by the prosecution through the investigating officer Kabindra Rabha (P.

- W. 6) as Ext. 3. In the ejahar the complainant has mentioned that the accused repeatedly committed sexual intercourse with her daughter which she was unaware as her daughter did not disclose before her due to threatening given by the accused. When she came to know about the incident, she asked the accused not to visit her house and then one day the accused entered into her house with a dao and threatened to kill her and she lost her sense and thereafter the accused again committed sexual intercourse with her daughter. The contents of the ejahar show that her daughter conceived for two months. But the complainant while deposed in the Court has not stated anything that the accused repeatedly committed sexual intercourse with her daughter. Even she has not stated anything that her daughter conceived for two months while she filed the ejahar. The complainant was cross-examined by the defence where she has disclosed that earlier she filed similar cases against Mofidul, Johidul, Jabbar etc. She had withdrawn those cases as they assured her to hand over a plot of land to her.
- 12. The prosecution has examined the alleged victim as P. W. 2. She has deposed that her mother is a domestic help and works in different houses in their village. When her mother goes out for work she remains alone in her house. The accused visited her house and exhibited obscene gesture to her. Thereafter the accused at the point of knife had sexual intercourse with her. The accused left her house and after two days he again came to her house and at the point of knife had sex with her. She had confided the incident to her mother. Thereafter the accused came again and at the point of knife committed sexual intercourse with her. The matter was put up before the village elders. The accused did not come to the sitting. The villagers suggested lodging FIR; so, her mother filed FIR. Her statement was recorded in the Court which has been exhibited as Ext. 1. She authenticated her signatures thereon as Ext. 1 (1) and Ext. 1 (2). In crossexamination she has deposed that there are many residences near her house. She raised alarm; but none of them had come to rescue her. She has denied the suggestion of the defence that before investigating officer she did not disclose that the accused coming to her house, having intercourse with her forcibly and reporting the matter to her mother and her mother brought the matter before village bichar. The accused had filed a case against her for unwarranted intrusion. Police did not seize any cloth from her which she had worn at the time of occurrence.
- **13.** After filing the case the victim was examined by the medical officer Dr. Rinku Ahmed (P. W. 3). She has deposed that at the time of examination the victim was 13 years old. She

was found her normal. She did not find any mark of injury on her body and also not find any spermatozoa in her vaginal swabs. She did not find evidence of sexual intercourse on her. She has exhibited her report as Ext. 2 and her signature as Ext. 2 (1). From her cross-examination it appears that she advised the victim to do x-ray for determination of her age, but no x-ray was produced before her.

- **14.** The grandmother of the victim was examined as P. W. 4 who has deposed that she was told that the accused threatened her granddaughter showing a knife. But she does not know the reason. The only independent witness Bhelo Bewa (P. W. 5) knows nothing about the incident.
- **15.**The investigating officer Kabindra Rabha (P. W. 6) has deposed that after filing the case Officer-in-charge of Agomoni police station registered a case under sections 447/325/376/506 IPC and entrusted him to investigate the case. He visited the place of occurrence, prepared the sketch map of site, recorded the statements of witnesses and also recorded the statement of the victim under section 164 Cr. P. C. He found material of POCSO Act and filed application to add section 4 of POCSO Act which the Court allowed. He arrested the accused and forwarded to the Court. By completing the investigation he has submitted charge sheet against the accused under section 447/376/506/ IPC read with section 4 of POCSO Act. He has exhibited the ejahar as Ext. 3 and the signature of the then O. C. Agomoni P. S. Gaznabi Ahmed as Ext. 3 (1). He has also exhibited the charge sheet as Ext. 4 and his signature as Ext. 4 (1). In cross-examination he has admitted that he seized nothing. He did not collect any document to ascertain the age of the victim and also not done ossification test of the victim girl.
- **16.** The material witnesses for the prosecution are the victim, her mother who filed the case and the medical officer. Section 4 of POCSO Act was not initially added. After recording the statement of the victim girl section 4 of POCSO Act was added. Very unfortunate that after adding the provision of POCSO Act, the investigating officer did not endeavour to ascertain the age of the victim girl by collecting either birth or school certificate. Even ossification test of the victim was also not done. It is the glare example of perfunctory investigation on the part of the investigating officer. In a case registered under the provision of POCSO Act the prosecution has to establish the age of the victim by producing cogent evidence. The evidence of medical officer shows that she advised to do x-ray to ascertain the age of the victim; but it was not done. Without any prove it is not safe to hold that at the time of the incident the victim girl was a child as defined

under the POCSO Act.

- 17. From the contents of the ejahar it appears that the accused repeatedly had sex with her daughter which she was unaware. When she came to know the facts she asked the accused not to visit her house and then one day the accused entered into her house and attempted to beat her by means of a weapon and then she lost her sense and the accused committed rape on her daughter. It is difficult to understand that one full grown woman lost her sense just the accused attempted to beat her. But while she deposed in the Court, she has not disclosed that fact. So, it is clear that the scribe added that story just to make the case strong.
- **18.**The complainant in her ejahar has stated that the accused had sex with her daughter several times and ultimately she conceived for two months. While the complainant deposed in the Court she has not whisper a single word that the accused committed rape on her and she conceived for two months. According to her the accused showed obscene gesture to her daughter whenever comes across with her and proposed to marry her. From her cross-examination it reveals that she filed such type of cases against other persons and the case was withdrawn as she was promised to hand over a plot of land.
- 19. The victim girl though has deposed that the accused had sex with her several dates on the point of knife; but she has stated nothing that she conceived. Her statement under section 164 Cr. P. C. was recorded which has been exhibited as Ext. 1. On perusal the same it appears that she disclosed that for three months the accused had sex with her. One day the accused asked her to take capsules; but she did not consume the same. She became pregnant and on the day of recording her statement she was pregnant for two months. It appears that on 23-02-2016 the statement of the victim was recorded by Judicial Magistrate and on 22-02-2016 the medical officer examined the victim. But the medical officer has stated nothing that on the day of examination she found the victim was pregnant. While the complainant and the victim were examined in the Court during trial, they have stated nothing regarding the pregnancy of the victim, delivery of the child.
- **20.** The Hon'ble Gauhati High Court in Abdul Aziz vs. State of Assam (2012) 2 Gauhati Law Reports 539, Atab Uddin Atias Aftabuddin vs. State of Assam (2013) 4 Gauhati Law Reports 180, Sh. Laldawngliana vs. State of Mizoram (2016) 3 Gauhati Law Reports 763

and Jairam Jaiswal vs. State of Assam (2016) 4 Gauhati Law Reports 580 the Hon'ble

High Court has opined that the statement of the prosecutrix in a case of rape can be

relied if her version is supported by the medical evidence.

21.In the case in hand, though the alleged victim has stated that the accused had sex with

her; but her statement was not supported by the medical officer who examined her. The

prosecution examined the grandmother of the victim girl who has also not deposed

anything regarding commission of rape to her granddaughter. She has simply stated that

she was informed that the accused threatened her granddaughter by showing a knife.

22.In a criminal case it is the duty of the prosecution to establish the charge against the

accused beyond all reasonable doubt. The suspicion howsoever strong, cannot take

place of proof.

23. After carefully scanning the evidence on record I come to the safe conclusion that the

prosecution has failed to establish the charge against the accused under section 376 IPC

read with section 4 of POCSO Act beyond all reasonable doubt.

24. In view of the above discussion and observation it is safely held that the accused

deserves benefit of doubt. Accordingly the accused is acquitted of the charge framed

against him under section 376 IPC read with section 4 of POCSO Act on benefit of doubt

and he is set at liberty.

25.Liability of the bailor of the accused remains in force for next six months as per law.

26. Given under my hand and seal of this Court this the 18th day of July 2019.

(D. Thakuria)

Special Judge, Dhubri.

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IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 21/2016

UNDER SECTION: 376 IPC READ WITH SECTIOM 4 OF THE POCSO ACT.

STATE OF ASSAM

VS.

LUTFUR RAHMAN

		<u>A P P E N D I X</u>	
A. Prosecution exhibits:			
	Ext. 1 :	Statement of the victim.	
	Ext. 2 :	Medical report.	
	Ext. 3 :	Ejahar.	
	Ext. 4 :	Charge sheet.	
В.	Defence Exhibits:	Nil.	
C.	Court Exhibits :	Nil.	
 D. Prosecution Witnesses: P. W. 1: Complainant, P. W. 2: Victim, P. W. 3: Dr. Rinku Ahmed, P. W. 4: Grandmother of the victim, P. W. 5: Bhelo Bewa & P. W. 6: Kabindra Rabha. 			
E.	Defence Witness:	Nil.	
F.	Court Witness :	Nil.	(D. Thakuria) Special Judge, Dhubri.