DISTRICT: DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - Shri D. Thakuria,

Special Case No. 10 OF 2016

<u>U/S 376 (2) (i) (l) IPC, r/w section 4 of POCSO Act</u>

Corresponding to G.R. Case No.2965/2015

State of AssamComplainant

Versus

Sahadat Ali ... Accused

Charge framed on : 01-08-2016

Evidence recorded on : 23-08-2016, 16-09-2016, 29-09-16 and 26-04-17

Statement recorded on : 27-03-2018

Argument heard on : 03-04-2018

Judgment delivered on : 03-04-2018

Advocates who appeared in this case

Shri B. Basumatary, Special P.P. for the Prosecution

Shri Y. A Bepari, Advocate, for the Defence

JUDGMENT

- **1.** The accused Sahahat Ali stands trial for the offences punishable under Section 376 (2) (i) (l) of the IPC, read with section 4 of POCSO Act.
- **2.** The facts of the case, in brief are as follows:

That on 05-07-2015, the complainant lodged a written ejahar before the Officer In-charge, Tamarhat Police Station with an allegation that on 04-07-2015 at about 11:00 pm, while his 16 years old daughter, who is mentally ill was sleeping in her room and then the accused entered into her room and committed rape on her.

- **3.** The Officer In-charge, Tamarhat Police Station registered a case against the accused as Tamarhat P.S. case no. 181/2015 u/s 376 (2) (i) (l) of the IPC, read with section 4 of POCSO Act.
- **4.** During investigation, the I.O. arrested the accused and produced him in the judicial custody, recorded the statement of the witnesses, also recorded the statement of the alleged victim before the Judicial Magistrate u/s 164 Cr.P.C., medically examined the alleged victim and by completing investigation, submitted charge sheet against the accused to persecute him u/s 376 (2) (i) (l) of the IPC, read with section 4 of POCSO Act.
- **5.** During investigation, the accused was released on bail.
- **6.** One of my learned Predecessors took cognizance of the case and issued process to the accused. The accused appeared in the court and he was allowed to remain on previous bail.
- **7.** After furnishing copies, the charge u/s 376 (2) (i) (l) of the IPC, read with section 4 of POCSO Act were framed against the accused. On being asked, the accused had pleaded not guilty and claimed to be tried.
- **8.** Prosecution has examined altogether eight witnesses including Medical Officer and Investigating Officer.
- **9.** After completion of hearing of the prosecution witnesses, the accused was examined u/s 313 Cr.P.C. He denied the allegations and evidence on record and also declined to adduce evidence in defence.
- **10.** Heard argument advanced by learned counsels appearing for the parties.
- **11.** Following points have been set up for determination:
 - (i) Whether the accused on 04-07-2015 at about 11:00 p.m., at village Musanmanpara under Tamarhat Police Station, committed rape on the minor daughter of the complainant who was mentally ill and thereby the accused is liable to be punished u/s 376 (2) (i) (l) of the IPC?

(ii) Whether the accused on the same day, time and place, committed penetrative sexual assault on the victim girl who was minor and thereby committed an offence punishable u/s 4 of POCSO Act?

DISCUSSION ON THE POINTS FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS

- 12. In order to establish the charge framed against the accused, the prosecution has examined eight witnesses. Among the prosecution witnesses, PW-1 is the complainant, PW-2 Abdul Malek, PW-3 Manindra Nath Roy, PW-4 Foyzal Sk, PW-5 Nizamuddin Sk and PW-6 Basoruddin Sk are independent witnesses. PW-7 Dr. Rinku Ahmed is the Medical Officer and PW-8 Abdul Motleb Sheikh is the Investigating Officer.
- 13. On perusal of the case record, it appears that during trial the victim girl was produced before court for recording her statement. The victim is mentally disabled girl who was present in the court with her mother. On being asked her name, she stated nothing and remained silent for considerable time. As the victim has stated nothing; so, she could not be examined during trial and court was compelled to discharge her without examination.
- **14.** The defence has examined none. The plea of defence is total denial of the prosecution case.
- **15.** PW-1 is the complainant and father of the alleged victim. His deposition shows that the accused is his immediate neighbour and the house of the accused is separated by a temporary fencing. One Saturday in the month of Ramjan, he had an altercation with the accused regarding boundary dispute. So, he had lodged FIR where he had given thumb impression. In cross examination, he deposed that he does not know how to read and write English and other language.
- **16.** PW-2 Abdul Malek, PW-3 Manindra Nath Roy, PW-4 Foyzal Sk, PW-5 Nizamuddin Sk and PW-6 Md. Basoruddin Sk have deposed that there was land dispute between the complainant and the accused and in this regard, very often they have used quarrel between themselves.

- **17.** PW-6 Dr. Rinku Ahmed has deposed that on 06-07-2015, while she was posted at Health and Maternity Centre, Dhubri, she examined the victim in connection with Tamarhat Police Station. On general physical examination, the patient was found normal and there was no mark of violence in the person of the patient. Clinical opinion is not consistent with recent sexual intercourse. She has exhibited her report which is marked as ext-1, ext-1(1) is her signature. In cross examination, she has deposed that ossification test was advised for determination of the age of the victim, but she was not interested.
- **18.** PW-8 Abdul Motleb Sheikh is the Investigating Officer, who has deposed that on 05-07-2015, he was posted at Tamarhat Police Station as Assistant Sub-Inspector of Police. On that day at about 12:30 p.m., O/C, Tamarhat Police Station told him that a person was confined in Musalman Para and directed him to go to that village. Accordingly, he visited Musalman Para and found the accused who was tied into a post in the verandah of the house of the complainant. The complainant told him that he has a daughter who is an unsound mind and the accused trespassed into his house with intent to outrage her modesty. On being asked, the victim girl indicated that the accused touched her breast and outraged her modesty. So, he seized some clothes of the victim girl at the place of occurrence and also recorded the statement of witnesses. Thereafter, he brought the accused to Tamarhat Police Station. The complainant lodged a written ejahar at Tamarhat Police Station and after registering the case, O/C, Tamarhat Police Station entrusted him to investigate the case. He arrested the accused, forwarded him to the court and also sent the victim girl to the court for recording her statement u/s 164 Cr.P.C. He sent the seized clothes for Forensic examination and also sent the victim girl for medical examination. He collected the reports from FSL and Medical Officer and submitted charge sheet against the accused u/s 376 (2) (i) (l) of the IPC, read with section 4 of POCSO Act. He has exhibited the seizure list as Ext-2, ejahar as Ext-3, FSL Report as Ext-4, statement of the victim recorded u/s 164 Cr.P.C. as ext-5 and charge sheet as ext-6. Ext-3 (1) is the signature of then O/C, Tamarhat Police Station and ext-6 (1) is his signature. In cross examination, he has stated that there is no his signature in ext-2. He brought the clothes of the victim girl from her father. He has denied the suggestion of the defence that he has not investigated the case properly.

- 19. On perusal the ejahar (ext-3), it appears that the complainant alleged that on 04-07-2015 at about 11:00 p.m., the accused entered into the room of his minor daughter who is unsound mind and committed rape on her. On perusal of the evidence of Investigating Officer (PW-8) it appears that on 05-07-2015, as per the direction of O/C, Tamarhat Police Station, he visited the house of the complainant and found the accused was tied into a post in the verandah of the house of the complainant. He arrested the accused and collected the clothes of the victim girl. Ext-2, the seizure list, shows that the Investigating Officer seized one Jangia, one nighty and one ladies payjama. In the seizure list, the Investigating Officer does not put his signature. He sent the seized articles to the Forensic Laboratory and collected the report from FSL which he exhibited as ext-4. On perusal of the ext-4, it appears that the Scientific Officer, FSL found positive test for human semen in seized jangia and nighty and on other exhibit, he found negative test for human semen.
- 20. Though the I.O. on the very next day arrested the accused; but he did not collect semen from the accused. As the I.O. did not collect semen from the accused and had not matched with the semen found by Scientific Officer in seized jangia and nighty; so, it is not known that the semen found in the above mentioned seized articles was the semen of accused.
- 21. The complainant while deposed in the court, he has not supported the case of the prosecution. He has simply stated that there was land dispute between him and the accused. The other independent witnesses have also deposed that there was land dispute between the accused and the complainant. Regarding commission of rape or penetrative sexual intercourse, the witnesses examined by the prosecution have not stated anything. As the victim girl is mentally disabled, so, her statement in the court could not be recorded.
- 22. From the evidence on record, it is established that the accused is the immediate neighbour of the complainant and there was land dispute between them. Occurrence of quarrel between the accused and complainant was regular incident. So, on the day of the incident, there might be quarrel between the accused and the complainant regarding their boundary dispute and the complainant might be tied the accused into a post with rope and the I.O. recovered the accused and arrested him.

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23. In a criminal case, it is the duty of prosecution to establish the charge against the accused beyond all reasonable doubt. In the case in hand, the prosecution has failed to establish the charge framed against the accused beyond all reasonable doubt. So, the accused deserves benefit of doubt and he is

acquitted of the charges and he is set at liberty.

24. Destroy the seized articles after expiry of appeal or revision period.

25. The liability of the bailor remains in force for next six months as per law.

26. Signed, sealed and delivered in the open Court on this the $3^{\rm rd}$ day of April,

2018, at Dhubri.

(D. Thakuria) Special Judge, Dhubri

Dictated & corrected by me.

(D. Thakuria) Special judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Complainant

PW-2 Independent witness

PW-3 Independent witness

PW-4 Independent witness

PW-5 Independent witness

PW-6 Independent witness

PW-7 Dr. (Mrs) Rinku Ahmed (M.O.)

PW-8 Abdul Motleb Sheikh (I.O.)

2. PROSECUTION EXHIBIT:

Exhibit-1 Medical report

Exhibit-2 Seizure List

Exhibit-3 Ejahar

Exhibit-4 FSL Report

Exhibit-5 Statement of the victim u/s 164 Cr.P.C.

Exhibit-6 Charge sheet

(D. Thakuria) Special Judge, Dhubri