IN THE COURT OF SPECIAL JUDGE :: KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.07/2019 U/S.4 of POCSO Act

STATE OF ASSAM

Vs

Md. Sofiqul Islam S/O. Mazibor Rohman

Vill- Jalabila P.S. Bagribari Dist. Kokrajhar

...... <u>Accused person</u>.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P

Learned Counsel for the defence Mr. Iqbal Hussain

 Charge framed on
 02.05.2019

 Evidence recorded on
 19.08.2019;

 27.09.2019

 Argument heard on
 21.01.2020

 Judgment pronounced on
 01.02.2020

JUDGMENT

1. The case of the prosecution is that on 5.1.2019 at about 8 PM one xxxx, the father of the victim, lodged anwriten FIR at Bogribari Police Station alleging that accused Sofikul Islam has been maintaining sexual

relationship with her daughter xxx, aged 17 years and the other accused Mojibar Rahman, Sahiton Bibi and Roshid Ali have been defaming the name of his daughter.

- 2. On receipt of the FIR a case under Section 120B/457/354//34 IPC read with Section 4 of the POCSO Act was registered and after completion of the investigation, a charge sheet was laid against the accused Sofiqul Islam for commission of offence U/S457/355 IPC read with Section 4 of the POCSO Act. The other accused were not sent up for trial.
- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. The case was transferred to this Court for disposal. After hearing both sides charges under Section 4 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial prosecution examined 3 (three) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

5. POINTS FOR DETERMINATION :-

(i) Whether the accused is guilty of offence under Section 4 of the POCSO Act?

DECISION AND REASONS:

- 6. Pw1 xxx, the father of the victim deposed that he is the informant of this case. About 6 months back, he had seen the accused in his residence embracing his daughter Arifa Khatun who was then aged about 14 years. He immediately informed local villagers and they asked him to hand over the accused to Police. He accordingly informed the police. Police team came to his residence and took away the accused. He had lodged the FIR and he had put thumb impression.
- 7. In cross examination Pw1 deposed that he does not know the contents of the FIR.
- 8. Pw2 xxx, the mother of victim, deposed that about 8 months back, at about 7 p.m she was away from her home. At that time, the accused came to their house and was talking to their daughter. When her husband reached home he saw her daughter talking to accused. Her husband raised hue and cry and informed the police. She know only this much about this case.
- 9. At this stage, learned Special P.P sought leave of the Court to declare the witness as hostile. In cross examination by Special P.P, pw 2 deposed that they had settled the dispute with accused. Pw 2 denied the suggestion that she had stated before Police that her husband had seen her daughter having sex with the accused.
- 10. In cross examination of Pw2 by the defence, she deposed that her statement was never recorded by Police.

- 11. Pw3 xxx, the victim, deposed that tabout 7 months back accused had come to her residence at about 7 p.m. At that time her father and mother were away from home. While they were talking, her father came home and started rebuking her. He raised a hue and cry and lot of people gathered. Later her father lodged a police case. She was produced before the Magistrate and her statement was recorded. Ext 1 is the statement, Ext 1 (1)(2) are her signatures.
- 12. At this stage, learned Special P.P sought leave of the Court to declare the witness as hostile. In cross examination by Special P.P, pw 3 deposed that they had settled the case with accused. Pw 3 denied the suggestion that she had stated before the Magistrate that her father caught her red handed while she was having sexual intercourse with the accused.
- 13. In cross examination of Pw3 by the defence, pw 3 deposed that she does not know after how many days her father lodged the case. Her father did not inquire from her before lodging the case. She does not know the contents of the FIR. She also deposed that police had asked her to depose in the manner as stated in her statement under Section 164 CrPC. She deposed that accused never had any sexual intercourse with her.
- 14. In the course of investigation, the victim and her parents had not given consent for conducting medical examination of the victim. Thus, neither there is any medical evidence nor is there any oral evidence to

suggest that victim is sexually exposed and that the accused committed sexual intercourse with the vicitm.

15. In view of the above, the point for determination is answered in negative.

ORDER

Accused Md.Sofiqul Islam is acquitted of the charge under Section 4 of POCSO Act and set at liberty forthwith. His bail bonds shall remain valid for six months.

Given under the hand and seal of this Court on this $\mathbf{1}^{\text{st}}$ day of February,2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

<u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 Statement

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Md. Iman Ali

P.W.2 Musstt. Joyoda Bibi

P.W.3 xxx victim

4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge Kokrajhar