HEADING OF JUDGMENT IN SPECIAL CASE

District :- Goalpara.

IN THE COURT OF SPECIAL JUDGE:::::: GOALPARA.

Present:- Sri S. Hazarika, A.J.S.

Special Judge, Goalpara.

Spl. Case No.25/19

U/s.376 of IPC read with Section 4 of POCSO Act.

In connection with Matia PS Case No.52/18

State

-vs-

Rofiqul Mondal

..... Accused.

Date of Framing Charge :18/09/2019

Date of Evidence :18/02/2020, 25/02/2020

Date of Argument :25/02/2020

Date of Judgment :29/02/2020

<u>JUDGMENT</u>

1. The prosecution case in brief is that the informant Aijuddin Sk lodged an F.I.R. alleging inter alia that his daughter who is aged about 16 years

is studying in class-ix at Simlitola high School. On 12.04.2019 at about 9.00 P.M. when her daughter was going towards school the accused forcefully kidnapped his daughter and took her in a vehicle. Thereafter, his daughter was thoroughly assaulted and after snatching all her ornaments she was driven out. The accused also forcefully committed rape upon his daughter. On receipt of the F.I.R. the O.C. of Matia P.S. registered the case and investigation was done. During the investigation of the case the I/O had sent the victim for examination and thereafter, medical report was collected. The victim was sent to the court to record her statement U/S-164 Cr.P.C. Accordingly, her statement was recorded. I/O has examined the witnesses and after completion of the investigation he submitted the Charge-Sheet U/S-366(A)/376 of I.P.C.

2. The accused faced trial and the copies of relevant documents were furnished. Upon considering the materials on record this court framed charge U/S-376 I.P.C. R/W section 4 of the POCSO Act. The contents of the charges read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION ARE :-

- i) Whether the accused on 12.04.2019 at about 9.00 PM committed rape upon the victim.
- ii) Whether the accused committed penetrative sexual assault upon the victim who is a minor aged about 16 years.

After the evidence of the prosecution side the statement was recorded U/S-313 Cr.P.C. wherein the accused denied the circumstances against him and claimed to be innocent.

4. DISCUSSIONS, DECISIONS, AND REASONS THEREFORE :-

5. In the instant case the prosecution side examined three (3) witnesses.

I have heard argument advanced by both parties and also gone though the evidence on record. Among the witnesses PW1 is the informant, PW2 is the prosecutrix/victim, PW3 is the mother of the victim.

- **6.** The PW1 (informant) stated that he is the father pof the victim. Some one year ago his daughter had some relation with the accused who took her to his house. As the neighbor saw them and as per their version he lodged the F.I.R. He has given thumb impression as he is illiterate. The informant is examined and cross-examined who stated that his daughter visited the house of the accused and he lodged the F.I.R. due to misunderstanding. The evidence of the informant does not show that he has taken the girl forcefully or committed sexual assault upon her rather he stated that he lodged the F.I.R. due to misunderstanding. Thus, the informant did not support the allegations made by him in the F.I.R.
- **7.** PW3 is the mother of the prosecutrix who also sated like the informant. In his statement he stated that her daughter had love affair with the accused. As they were talking the public caught them and as per version of public her husband had lodged the F.I.R. The witness remained silent regarding kidnapping of her daughter or committing sexual assault by the accused. As such she also did not support the prosecution case.
- **8.** PW2 is the prosecutrix of the alleged incident and she is the vital witness. She is also the star witness of this incident. In her statement she stated that on the date of the occurrence she was talking with the accused and they had love affair. The villagers saw them and out of suspicion they informed the father and her father accordingly lodged the F.I.R. The police brought her to the court and recorded her statement. Ext.1 is her statement U/S-164 Cr.P.C. The prosecutrix is the most vital witness to support the prosecution case. But in the instant case the prosecutrix remained silent that the accused had kidnapped her and she also remained silent that the accused had done any bad thing with her.

Her evidence goes to show that she had love affair with him and the public on suspicion informed her father who lodged the F.I.R. Without the evidence of the vital witness the prosecution case can not stand. There is nothing to hold that the accused had committed the offence for which he is facing trial. The accused deserves to be acquitted. Hence, he is acquitted. His bail bond shall stand canceled after six months.

9. Given under my hand and seal on this 29th day of February, 2020.

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

Special Judge, Goalpara.

(Sri S. Hazarika, AJS,) Special Judge, Goalpara.