IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Special (POCSO) Case No.04/2017 U/S 376 (2)/34 IPC, R/W Section 4 of POCSO Act

Present : Mr. Dhrupad Kashyap Das Sessions Judge, Morigaon.

State of Assam

Vs.

- 1) Md. Julfikar Ali
- 2) Md. Abul Kasem
- 3) Md. Abul Kasem.

..... Accused Persons

Date of Charge :- 29.08.2016.
Date of recording evidence :- 29.11.2017.

Date of Argument :-29.11.2017.

Date of Judgment :-30.11.2017.

Appearance for the Parties

Advocate for the State:- Mr. A. Kalam, Ld. P.P.

Advocate for the accused:- Mr. A. Zaman, Ld. Advocate.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 19.08.2016, at around 7.00 PM, while the informant was returning back to her house after her visit to her grandmother's house, the accused person namely, Julfikar Ali of village Tatikata Pathar under Moirabari PS, in the district of Morigaon, had met her on road and by way of inducement called her to his workplace and thereafter, the accused by

assuring the informant-cum-victim to marry her he kept her in his house for two days and committed repeated sexual intercourse. It is also alleged by the informant that on 21.08.2016, accused Julfikar handed over her to other accused persons namely, Abul Kasem and another Abul Kasem of village Tatikata Pathar and by taking the advantage they also committed sexual intercourse with her against her wish.

On 22.08.2016, the informant went to the Moirabari PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Moirabari PS registered a case vide Moirabari PS Case No. 316/2016, U/s 493of IPC r/w Section 9 (g) of the POCSO Act.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, drew sketch map of the place of occurrence and seized one transfer certificate of the victim from the P.O. The I.O. examined the material witnesses and also got the victim medically examined. The victim was also produced before Magistrate for recording her statement U/s 164 Cr.PC. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused persons with allegation of offence punishable U/s 493/34 IPC r/w Section 6 of the POCSO Act showing the accused person as arrested. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. Accordingly, the accused persons produced before this court and they were let off on court bail. They were also furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. On receipt of the case record, having heard Ld. Counsel of both sides and basing upon the materials on record, framed charge U/s 376 (2)/34 IPC r/w Section 4 of the POCSO Act against the accused persons, which was read over and explained to the accused persons to which they pleaded innocence and claimed to be tried.

2. <u>Point for determination</u>:

- (i) Whether the accused persons in furtherance of common intention on 19.08.2016, at about 7.00 PM at village Tatikata Pathar under Moirabari PS, committed rape upon the informant?
- (ii) Whether the accused persons on the same day, time and place, committed an offence of penetrative sexual assault as defined U/s 3 of the POCSO Act with the informant?
- 3. In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the informant-cum-victim as PW-1 and the mother of the victim girl as PW-2. But their evidence did not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for the ends of justice. The accused persons declined to adduce defence evidence.
- **4.** I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

5. <u>DISCUSSION, DECISION AND REASONS THEREOF</u>

In this case, it is alleged by the prosecution that on the eventful day the above-named accused persons committed sexual intercourse with the informant against her will.

(a) To prove this fact, the prosecution has examined PW-1, Miss. Ajufa Begum, she in her evidence stated that she is the informant of this case. She knows the accused persons who are her relative. She lodged the ejahar about one year ago. On the date of occurrence of the incident, while she was returning to her house after visiting her grandmother, she met accused Julfikar on road. Thereafter, the accused Julfikar took her to Moirabari market. On that day, they

both were loitering in the Moirabari market and on the next day, she returned to her house. After coming back to her house, her family members pressurized her to lodge the case against the accused persons. Accordingly, she lodged the case. On that day, she willingly went with the accused person Julfikar. The accused person did not kidnap her and did not commit any illegal act with her. The ejahar was written by somebody else. She does not know the contents of the ejahar. She simply put her signature in the ejahar. Ext.1 is the ejahar and Ext.1 (1) is her signature on the same. The case was lodged out of misunderstanding. She was also produced before the Magistrate who recorded her statement. Ext.2 is the said statement and Ext. 2(1) is her signature on the same.

Her cross-examination was declined by the defence.

(b) PW-2, Musstt. Nurjahan Khatun, in her evidence stated that, the informant is her daughter. The ejahar was lodged about one year ago. She knows the accused persons who are her relative. On the date of occurrence of the incident, her daughter went to visit her grandmother but she did not return to home on that day. On the next day, her daughter returned home and told us that while coming back to house, the accused Julfikar met her on the road and took her to Moirabari market and stayed there. Thereafter, our neighboring people insisted her daughter to lodge a case against the accused persons. Accordingly, the case was lodged. However, her daughter told them that, the accused did not commit any immoral act with her. She knows this much only. The case was lodged out of misunderstanding as their village people pressurized them to do so. The accused persons are innocent. She has no objection if the accused persons are released.

Her cross-examination was declined by the defense side.

6. Thus, we have found that none of these witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. the informant and the mother of the victim respectively) examined by the prosecution have not stated anything as

regards to committing rape and penetrative sexual assault being allegedly committed by the accused persons.

- of the prosecution case remained un-substantiated, as the informant-cum-victim and the mother of the victim have clearly stated that the accused did not kidnap her and did not commit any immoral act with her. PW-1 also stated that she willingly went with the accused and after returning the village people pressurized her to lodge the case. But after lodging the case she realized that the case was lodged out of misunderstanding against the accused persons. So, we have found that the most material witnesses of this case as PW-1 & PW-2 did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. mandates an acquittal of the accused from an offence, which states that "If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."
- **8.** In view of the above discussion and in view of Section 232 Cr.P.C., I have found that the prosecution has failed to establish the guilt of the accused persons beyond any reasonable doubt. In the result, the accused persons are not found guilty for the offences punishable U/s 376 (2)/34of IPC, r/w Section 4 of POCSO Act and as such, they are acquitted and set them at liberty. Their bail bond shall remain extended till next six months.

Judgment is delivered and pronounced in the open Court on this 30th day of November, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

<u>APPENDIX</u>

A. <u>Prosecution witness</u>

- 1. PW-1 :- Miss. Ajufa Begum
- 2. PW-2 :- Musstt.Nurjahan Khatun

B. <u>Defence witness: Nil.</u>

C. Prosecution Exhibit:

- 1. Ext.1 :- Ejahar.
- 2. Ext.2:- 164 Statement of the victim.
- D. Defence exhibits :- Nil.

Special Judge, Morigaon.