

(U/S 376 of IPC and Sec.4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam

-Versus-

1. Moloy Chanda

2.	Rajen	Chanda	Accused	persons.
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Argument heard on:-4.3.2020.

Judgment pronounced and delivered on:-.....4.3.2020.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Sri. S. Sengupta, Id. Advocate.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that the informant lodged an FIR with the In-Charge, Udharbond Police Station stating the facts that his daughter ,the victim, (name withheld) had love affairs with accused Moloy Chanda and on 3.4.18 at about 7 p.m. on the conspiracy of accused persons the victim came out and accused Moloy Chanda had taken her away on enticing her and on promise of marriage he committed rape on

her and the accused persons fled away leaving the victim on the place of occurrence.

- 2. On receipt of the FIR, I/c Palonghat police outpost forwarded the same to Dholai PS wherein a regular PS case vide Dholai P.S. Case No. 89 of 18 U/S 376 of IPC was registered . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C and the victim was medically examined. Police also visited the place of occurrence and drew up a sketch map and recorded the statement of the witnesses and subsequently after completion of investigation submitted charge sheet against the accused persons U/S 376 of IPC r/w section 4 of POCSO Act.
- 3. As the offence under POCSO Act exclusively triable by Special court , trial was taken up by this court and subsequently in due course after hearing both sides formal charge U/S 376 IPC and Section 4 of POCSO Act was framed by this court against the accused persons. The charge having been read over and explained, the accused persons pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (1) Whether the accused person on 3.4.18 at about 7 p.m. at village Patabari under Dholai PS committed rape on the victim, as alleged?
- (2) Whether the accused person committed penetrative sexual assault upon the victim, as alleged ?
- 5. Prosecution examined as many as two witnesses, the victim and the informant as PW.1 and PW.2. On the submission of the ld. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 6. I have gone through the entire evidence on record and have

also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW.1, the victim, deposed in her deposition that her father lodged the FIR against the accused persons. She added that she was having love affairs with accused Moloy Chanda and out of her own accord she went with him in her sister's house and the same fact is not known to her father and as such he lodged the FIR against them. She further deposed that after that police recovered and sent her to Silchar Medical College and Hospital for her medical examination and thereafter she was brought to Court where her statement U/S 164 Cr.P.C was recorded and thereafter she was given in zimma of her father. Ext. 1 is her statement U/S 164 Cr.P.C. wherein Ext. 1(1) is her signature.

PW.1 stated in her cross examination that she gave statement before Magistrate U/S 164 Cr.P.C as tutored by her relatives. She also stated that she does not have any grievances against both the accused persons. She further stated that at the time of lodging of FIR by her father she was aged about 19 years. She also stated that she does not know for what reasons her father lodged the FIR and he did the same without consulting her.

9. PW.2 Monindra Das who is the informant of this case deposed in his evidence that on the date of occurrence, he was in the market and on return at night he did not find his daughter, the victim and they searched for her but not finding her, he lodged an FIR with the Palongghat Outpost. Ext. 2 is the FIR wherein Ext. 2(1) is his signature. PW.2 further deposed that police recovered his daughter from the house of his niece, and that his

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daughter was brought to the Court and thereafter police gave her in his zimma. He further deposed that he gave her daughter in marriage and she is now staying in her in law's house at Smithnagar under Sonai PS.

In the cross examination he stated that he does not know the contents of the FIR and the FIR was got written by his relatives and he only put his signature. He also stated that after recovery victim told him that she went with the accused Moloy Chanda out of her own accord. PW.2 also stated that at the time of occurrence, the age of his daughter was about 19 years. He also stated that he does not have any grievances against the accused persons.

- 10. Appreciating the evidence available on record as discussed above, it reveals that the prime witness the victim PW.1 and the informant PW.2 did not at all implicate the accused persons in the alleged offence of crime in their deposition. Rather from the evidence of PW.1 it appears that out of love affairs she went with accused Moloy Chanda and as the same was not known to her father PW.2, he lodged the FIR and at that time she was aged about 19 years. PW.2 the informant also deposed that her victim daughter was recovered from the house of his niece and in cross examination he stated that the FIR was got written by his relatives and he does not have any knowledge about its contents and at the relevant time victim was about 19 years. Both the witnesses stated in their cross examination that they have no grievances against the accused persons. For non implication of the accused persons by the prime witnesses the victim and the informant the both the accused persons deserve to be acquitted.
- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 376 of IPC and Sec. 4 of POCSO Act against accused persons.

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12. In view of the above, accused persons are not held guilty and stand acquitted of the charge leveled against them and they are set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 4th day of March, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge,

Special Judge,

Cachar, Silchar.

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 14 of 2019.

APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 – victim,

P.W. 2 — Monindra Das,

- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: -

Ext. 1 — Statement of victim

Ext.2 - FIR

- (E) <u>DEFENCE EXHIBITS</u>: NIL. (F) COURT EXHIBITS: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.