IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.52/2018

U/S-342/376/511 of IPC R/W Section 4/8 of POCSO Act, 2012

State of Assam

-Versus-

Md. Saidul Ali

s/o-Sahid Ali

Resident of vill -No.2 Rangapani

P.S.-Boko

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

A. Paramanik, Ld. Advocate ------for the accused

Date of evidence: 01.12.2018, 08.02.2019, 12.04.2019

Date of Argument:26.04.2019

Date of Judgment:26.04.2019

JUDGEMENT

- 1. The Prosecution case in brief is that—on 27.11.2015 the informant—Md. Rupchand Ali lodged an ejahar alleging that on 16.11.2015 at about 2.00 p.m the accused —Saidul Ali had forcibly taken away his minor daughter from near the cucumber plantation and tried to commit rape upon her. But when she shouted, the accused fled away. And hence, this FIR.
- 2. On the basis of the said ejahar, Boko P.S Case No. 683/2015 U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012 against accused— Saidul Ali. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as five (5) numbers of witnesses including the informant and victim. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 16.11.2015 at about 2.00 p.m entered the Complainant's house and wrongfully confined the minor daughter of the complainant and, thereby, committed an offence punishable U/S 342 of IPC?
- (II) Whether the accused on the same date, time and place attempted to commit rape on the minor daughter of the Complainant, and thereby, committed an offence punishable U/S-376/511 of IPC?

- (III)Whether the accused on the same date, time and place committed penetrative sexual assault on the victim girl and thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?
- (IV) Whether the accused on the same date, time and place you entered the house of the complainant and committed sexual assault with the informant's minor daughter and thereby, committed an offence punishable U/S-8 of the POCSO Act, 2012

6. **DISCUSSION, DECISION AND REASONS THEREOF:-**

Perused the record. Prosecution examined five (5) witnesses. Let us go through the evidences available on record.

P.W.1, Md. Rupchan Ali is the informant of this case. He knows the accused person—Saidul Ali. The incident took place about two years ago. Prosecutrix is his daughter. She was 12/13 years old at the time of occurrence. On the relevant time, he was not present in his house. And at 3.00 p.m, when he came home, he heard from the prosecutrix that the accused called her to the vegetable field at around 12 noon. The accused caught hold of her and touched her breast and attempted to rape her. She cried and shouted. Then, the accused left her and she came home running. P.W.1 told the incident to the father of the accused and also the President of the village. A village 'mel' was to be held regarding the incident but when no 'mel' was held till 15 days, P.W.1 lodged the ejahar.

In his cross-examination, P.W.1 stated that the ejahar was lodged by him after one week of the occurrence. He did not see the incident by himself and he had no personal knowledge regarding the incident. The ejahar was written by police in the police station. Prosecutrix has been married of 1 $\frac{1}{2}$ years ago. She was just $\frac{2}{3}$ months below 18 years at the time of her marriage.

8. P.W.2, Musstt. Sajiran Nessa has deposed in her evidence that informant of this case is her husband. She know the accused person—Saidul Ali. The incident took place about two years ago. Prosecutrix is her daughter. She was 12/13 years old at the time of occurrence. On the relevant time, she was in the paddy field. The accused had called the prosecutrix to his vegetable field at around 12 noon. Then, she heard the

cries of the prosecutrix and she went to the spot and saw the accused had caught hold of her and touched her breast and was pulling her clothes and tore it. He attempted to rape her. P.W.2 caught the accused by his collar. But, the accused pushed her and fled away. They told the incident to the father of the accused and also the President of the village. A village 'mel' was to be held regarding the incident but when no 'mel' was held. Then P.W.1 lodged the ejahar. Police recorded her statement.

In her cross-examination, P.W.2 has stated that Prosecutrix has been married of. She was 18 years at the time of her marriage.

- 9. P.W.3, Musstt. Salima Khatun deposed in her evidence that she knows both the parties. The incident took place about 2 years ago. P.W.3 was not at home at the time of incident. She only heard that there was fight between the parties regarding payment for money for working in the cucumber planting field. Police did not enquire her about the incident.
- 10. P.W.4, prosecutrix is the vital witness in this instant case. She has deposed in her evidence that informant is her father. She knows the accused. P.W.4 was working as labourer in the cucumber field of the accused. But the accused did not give any money for her work. So, there was an altercation between them over payment of wages. Then, her father gave the ejahar out of anger.

In her cross-examination, P.W.4 stated that accused did not do any bad act with her. The ejahar was lodged as tutored by the village people and even the statement given by her before the Magistrate was also tutored by others.

- 11. P.W.5, Abdul Kalam has deposed in his evidence that he knows both the parties. He know the prosecutrix. The incident took place about 3 years ago. He heard that there was an altercation between the prosecutrix and accused over payment of wages for working in the cucumber field of the accused. P.W.5 heard that the prosecutrix was to get some money from the accused for work but the accused did not give her. Further P.W.5 disclosed that he did not know anything about the incident.
- 12. I have heard the arguments of both the sides. Perused the evidences on record.

- 13. Now, in this instant case, it is in the evidence of P.W.4 (prosecutrix) that on the date of occurrence an altercation took place between her with the accused over payment of wages as she was working as labourer in the cucumber field of the accused. But the accused did not give any money for the work done by her. P.W.4 made it clear that no incident as alleged in the ejahar and in the statement made before the Magistrate U/S-164 Cr. P.C had taken place with her. P.W.4 also disclosed that she gave her statement as tutored by some other. She confirmed that the accused did not do any bad act with her. But, her father (P.W.1) on being informed about the incident, lodged the ejahar against the accused out of anger and tutored by the village people. Therefore, it is well proved that the accused did not do any bad act with the prosecutrix (P.W.4). Hence, the offences U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012 are not at all attracted in this instant case.
- 14. Considering the above facts, materials and evidences of the Pws, it is concluded that the prosecution has miserably failed to establish the commission of offences U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012 beyond all reasonable doubt against the accused person—Saidul Ali. Accordingly, the accused is held not guilty. He is, hereby, acquitted of the offences U/S-342/376/511 of IPC R/W section 4/8 of the POCSO Act, 2012, and set at liberty forthwith.
- 15. His bail bond stands cancelled. Bailor is discharged from his liabilities.
- 16. His bail bond stands cancelled.
- 17. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 26th day of April, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witnesses:

P.W.1, Md. Rupchan Ali

P.W.2, Musstt. Sajiran Nessa

P.W.3, Musstt. Salima Khatun

P.W.4, prosecutrix

P.W.5, Abdul Kalam

Prosecution Exhibit

Nil.

Special Judge, Kamrup, Amingaon