IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U. Ahmed, AJS,

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 09/2016 corresponding to GR Case No. 479/2016 & Khatkhati Police Station Case No. 49/2016 Under Section 4 of the POCSO Act.

State of Assam

Versus

Shri Md Rahman Ali alias Rahmat Ali

Name of informant/complainant:

Mustt Raimon Nessa

Name of the accused person facing trial:

Md Rahman Ali alias Rahmat Ali

S/O Md Rab Uddin Ansari,

Village: Jortokbi Gaon

PS: Khatkhati

District: Karbi Anglong.

Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor

For the defence : Ms R. Sarkar

Argument heard on : 16.7.2019

Judgment pronounced & delivered on: 16.7.2019

<u>JUDGMENT</u>

- 1. It is a case of penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 06.6.2016, the informant-Mustt Raimon Nessa lodged an ejahar with the O/C of Khatkhati Police Station stating inter alia that on the same day at about 7-30 AM, the accused-Md Rahman Ali alias Rahmat Ali kidnapped her daughter, Mis Anjuma Begum aged 13 years from a marriage ceremony which was going on at Jartakpi Chariali and taking her to a nearby jungle raped her. commission of said During the misdeed. neighbouring people noticed it and beat the accused person by means of lathi. But the accused managed to flee from the scene. On receipt of the ejahar, O/C Khatkhati Police Station registered a case vide its PS case No.49/2016 under section 4 of POCSO Act. On completion of investigation I.O. submitted the charge-sheet under the registered section of law against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the present accused person, copy was furnished to him. On perusal of the case record along with case diary, my predecessor after hearing learned lawyers of both sides found sufficient grounds for presuming that the accused person committed the offence under section 4 of the POCSO Act. Accordingly, the charge was framed. The particular of the charged offence was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Later on, this case was transferred to the Court of the undersigned and accordingly, trial started against the accused person.

4. During trial Prosecution has examined four witnesses including the informant and the alleged victim. Statement of the accused person was recorded under section 313 of Cr.P.C. Defence declined to adduce evidence. Plea of defence is of total denial.

5. **Point for determination is:**

Whether the accused person on 06.6.2016 at about 7:30 AM in a jungle of Jortakbi Gaon under Khatkhati Police Station caused penetrative sexual assault to Miss Anjuma Begum aged 13 years and that he thereby committed an offence punishable under section 4 of the POCSO Act?

6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove the case against the accused person. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

7. PW-1 is Smti Mina Bhumij who has stated in her testimony that she does not know the informant and the accused person. The occurrence took place two years back. On the day of occurrence at about 7:30 AM, she noticed from her house that the accused was

proceeding towards the nearby jungle by lifting a girl. Seeing the said scene, she made hue and cry and the she along with neighbours followed the accused. They found the victim lying in the jungle and her wearing clothes being removed up to her knee. Seeing them, the accused fled from the place. Thereafter, they got her dressed well and handed her over to her sister. At that time, the victim was about13 years old. During cross-examination, she told that the victim was dressed with Suridar. They saw the victim weeping, but did not hear hue and cry from her. The sister of the victim is the wife of the accused. The victim told her that the accused is her brother-in-law(Bhinideo). On reaching the place of occurrence, they did not find the accused there as he had already fled away. Police came to the place of occurrence and interrogated them.

8. PW-2 is Smti Dipali Basumatary who deposed in her testimony that she does not know the informant, but knows the accused person. The occurrence took place about two years ago. On the day of occurrence at about 7:30 AM, she saw from her house that the accused was proceeding inside the jungle taking a girl in his lap. Seeing this scene, she called the nearby people by shouting and they went inside the jungle. They saw in the jungle that the accused lying himself over the body of the girl. They found the long pant of the accused and the wearing clothes of the victim girl being removed up to their knees. The accused guessing their movement towards the jungle started running by putting on his long pant. On being asked, the victim told them that she came to the house of her sister for the purpose of attending a marriage ceremony and the accused taking the plea of sending her to school brought her to the jungle. They found the accused rapping the victim. Thereafter, they dressed her and took her to the house of her sister. Later, they came to know that the accused is the brother-in-law of the victim. In cross-examination, she told that they saw the accused and the victim walking. They reached the place of occurrence after ten minutes of taking away the victim to the jungle by the accused person. On the day of occurrence, she saw the accused from backside. She saw the accused gagging the mouth of the victim so that she cannot shout. On being asked, the victim told that she came to the house of her sister for attending a marriage ceremony. The accused married the sister of the victim girl. She further told that what she stated in the Court was also stated by her before the police.

9. PW-3 is Mrs Raimon Nessa who is the informant of this case. She has stated in her testimony that she knows the accused person. The victim is her daughter. She cannot recollect the date of the occurrence. On the day of occurrence, she went out for her daily work. Her victim daughter and with her another daughter went to attend a marriage ceremony. While she was busy in her work, someone asked her to go to the police station. On arrival at police station, she found her victim daughter and two women sitting there and she asked them as to what happened. The women told her that the accused drew the victim girl in order to make illegal physical contact with her. On being asked, the victim girl told that she fell in the mud by slipping and the accused lifted her by pulling. Police took the victim to the hospital for medical examination and got her statement recorded in the Court. At the time of occurrence, the victim girl was 15 years old. During cross-examination, PW-3 stated that the accused married her elder daughter. Although the ejahar was read over to her, but at that time she was mentally upset. She was asked by a man to go to the police station, but she is unable to say as to who was the said person. The victim did not tell anything her in the police station. She lodged the ejahar as she was told by the villagers.

10.PW-4 is Miss Anjuma Begum who stated has staed in her testimony that the informant is her mother and the accused is her brother-in-law. She cannot recollect the date of the occurrence. On the day of occurrence, she, her sister and her brother-in-law went to attend a marriage ceremony. The incident took place at the house where marriage was solemnized. She told her brother-in-law that she wanted to go to school from the place of marriage ceremony and then her brother-in-law told that he would drop her in the school. Then she told that she herself can go to school. On the way to school, she suddenly slipped down and her brother-in-law lifted her by pulling. Seeing this scene, some boys of the village came angrily there and her brother-in-law fled away from that place. Later on, her mother lodged an ejahar in this regard. Police got her medically examined and statement recorded in the Court. Ext.1 is her statement and Ext.1(1), 1(2) are 1(3) are her signatures. In her cross-examination, she told that her sister and brother-in-law came out of the marriage ceremony along with her. At the time of occurrence, her sister went to a shop to purchase some items. There were houses near the place of occurrence. At the time of occurrence, it was 7 PM. The accused did not make any illegal physical contact with her. She did not tell before the Magistrate that the accused took her to a nearby jungle, removed her wearing clothes and raped her. She has no objection, if the accused is acquitted. This is all about the prosecution evidence.

11.I have perused entire case record including the ejahar and the evidences of the witnesses. Allegation written the ejahar is very strong and the statements of PW-1 and PW-2 are also strongly corroborative. PW-3, Mustt Raiman Nessa is the mother of the victim girl. She lodged the ejahar by putting her thumb impression. In her examination-in-chief, she told that the victim girl told that she slipped down over the mud and the accused lifted her by pulling. In cross, she told that although the ejahar was read over to her, but at that time she was mentally upset. She was asked by a man to go to the police station, but she is unable to say as to who was the said person. The victim did not tell her anything in the police station. She lodged the ejahar as she was told by the villagers. From her evidence, it is found that she was an illiterate lady and she did not file the ejahar from her conscience. Her evidence is quite different to the fact of the ejahar. On the other hand, the evidence of the alleged victim is not satisfactory to the prosecution case. Her evidence was that on the way to school, she suddenly slipped down on the road and her brother-in-law lifted her up. Seeing this scene, some boys of the village came angrily there and her brother-in-law fled away from that place. From the evidence of the victim, it is found that although her sister was present with her, but at the

time of occurrence, she went to a shop to purchase some items. The prosecution could have examine the sister of the victim, but did not do it for the reason best known to it. From the close scrutiny of the evidences of the witnesses and the fact of the ejahar, it can be presumed that there was something wrong on the part of the accused, but the evidence accumulated in this case does not prove that the accused had committed the offence of penetrative sexual assault upon the victim. Hence, it can be held that case is not proved against the accused person as per requirement of law.

ORDER

- 12.In the result, I find that the prosecution has failed to prove its case against the present accused person. Hence, he is acquitted of the charge brought against him and let him set at liberty forthwith. The bail bonds shall remain cancelled after 6(six) months. Accordingly, this case is disposed of on contest.
- 13. Given under hand and seal of this court today, the 16th day of July, 2019.

Dictated and corrected by me.

Special Judge,
Karbi Anglong, Diphu.
Diphu.

Special Judge, Karbi Anglong,