IN THE COURT OF THE SPECIAL JUDGE

:::::: CHIRANG, KAJALGAON.

Special(P) Case No. 20(D)/2017 U/S 376 IPC R/W Section 4 of POCSO Act.



State of Assam *Vs.*Rafiqul Islam @ Rakib Ali

..... Accused

PRESENT:

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri M. Islam, Ld. Advocate

Date of evidence

: 12.01.18, 05.02.18, 14.03.18,

21.04.18, 29.05.18

Date of Argument

: 28.06.2018

Date of Judgment

: 12.07.2018

JUDGMENT AND ORDER

Chirang, Kalaigaon

- 1. The prosecution case in brief is that on 11.02.2017, the informant Miss 'X' (name is withheld) lodged an FIR before Dhaligaon P.S. alleging that on 10.02.2017 at 12.00 O'clock midnight, the accused called her over phone to his home and forcefully committed rape on her inside his room. Thereafter, on learning about the matter, his parents assaulted her and drove her away.
- 2. After receiving the FIR, the O/C of Dhaligaon P.S. registered a case being Dhaligaon P.S. Case No. 36/17 U/S 376 IPC R/W Section 4 of POCSO Act and entrusted A.S.I. Nur Hussain to take pre-step and S.I. Sofiqui Islam was entrusted to complete the investigation of the case. Accordingly,

the Investigating Officer arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC, collected the medical report and after completion of investigation, submitted charge-sheet against the accused Rafiqul Islam @ Rakib Ali U/S 376 IPC R/W Section 4 of POCSO Act. Accused was produced before this Court from jail. After receiving charge sheet, copies of relevant documents were furnished to the accused person. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, my learned predecessor framed charge U/S 376 IPC read with Section 4 of POCSO Act against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail.

- 3. In support of the case prosecution side examined as many as 8 (eight) witnesses including the M.O. and I.O.
- 4. Following witnesses are examined:-
 - (1) Victim as PW 1
 - (2) Musstt. Jabeda Khatun as PW 2
 - (3) Musstt. Ajiran Khatun as PW 3
 - (4) Md. Atowar Rahman as PW 4
 - (5) Md. Anowar Islam as PW 5
 - (6) Dr. Meena Hazarika (M.O.) as PW 6
 - (7) A.S.I. Nur Hussain Khan (I.O.) as PW 7
 - (8) S.I. Samir Bhushan Banik (I.O.) as PW 8
- 5. FIR was exhibited as Ext. 1. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext. 2. Seizure list was exhibited as Ext.3. Medical report was exhibited as Ext.4, sketch map was exhibited as Ext.5 and charge-sheet was exhibited as Ext.6.
- 6. Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.

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8. Now points for consideration:

For the offence U/S 376 of IPC

1. Whether on 10.02.2017 at about 12.00 night at Village Satipur (Colony) under Dhaligaon P.S., committed rape on the informant Miss 'X' (name is withheld)?

For the offence U/S 4 of POCSO Act

2. Whether on the said date, time and place, the accused committed penetrative sexual assault on the informant Miss 'X' (name is withheld)?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned points.
- 10. In this case PW 1 is the informant-cum-victim. She deposed that on the date of occurrence, at about 12 O'clock midnight, accused called her through mobile phone. Accordingly, she went out from her home and accused took her to his home on his motorcycle. Accused kept her in his room and committed sexual intercourse according to her own will. After that she returned to her home and informed the matter to her grandmother. According to advice of her grandmother, she lodged the FIR. PW 1 during her cross-examination, deposed that there was love affection between her and accused for a period of one year prior to the incident. She went with the accused according to her own will. The accused did not commit any sexual intercourse with her. She further deposed during the cross-examination that she lodged the case according to ill-advice of her grandmother.
- 11. Grandmother was examined as PW 2. She deposed that on the date of occurrence, her granddaughter was missing at midnight. On that night at about 2.00 AM, she found her granddaughter when she was returning from the house of the accused. She asked about the fact. Then victim told her that accused committed sexual intercourse with her. In this regard a village

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meeting was convened but accused refused to attend the meeting and villagers asked the accused to marry the victim but he refused. Therefore, case was filed against the accused. Learned defence counsel pointed out that the story regarding sexual intercourse by the accused is afterthought which was false but the PW 2 denied the suggestion. According to PW 2, age of the victim was about 15 years and she told the age on assumption.

12. PW 3 is the mother of the victim, who accompanied PW 2 when they were searching the victim on the night of occurrence. Interestingly, PW 3 did not state that her daughter told that accused committed sexual intercourse with her. PW 3 deposed that she along with PW 2 met the victim when she was returning. At that moment, victim did not state anything to her. On the other hand, PW 2 deposed that victim told the entire story before her. If victim told the story to the PW 2, then definitely PW 3 heard the same. Interestingly, PW 3 did not state anything about the incident. On the other hand, PW 1 stated that according to ill-advice of PW 2, she lodged the FIR. The PW 3 also stated that all incidents were known by PW 2 only. Therefore, the story narrated in the FIR by the victim is not trustworthy or believable. Other witnesses heard about the incident from the victim. Victim also stated that she stated the story to villagers and before this Court as tutored by her grandmother.

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- Officer, age of the victim was above 16 years but below 20 years. So, her age may be about 18 years. According to victim, she went with the accused according to her own will. There was no sexual intercourse between victim and accused as revealed from the cross-examination of the PW 1. PW 5 had no direct knowledge. PW 7 is the I.O. who investigated the matter and sent the victim for recording her statement U/S 164 CrPC and for her medical examination. PW 8 is another I.O. who submitted charge-sheet.
- 14. After going through the evidence of material witness PW 1, I have found that she lodged the FIR according to ill-advice of PW 2. PW 3 debarred herself from saying anything. It is not believable that victim did not state to her anything though she is the mother of the victim. On the other

hand, PW 2, the grandmother of the victim stated all these facts which were narrated in the FIR. No any guardian lodged the FIR. They asked the victim to file the FIR. Victim stated that she lodged the FIR as stated by her grandmother. As material witness did not support the prosecution story, so the evidence given by other witnesses, who heard the incident from the victim is not reliable. The prosecution story is not trustworthy and allegation is not proved against the accused. Both the points mentioned above are remained as not proved. Accused is not found guilty.

ORDER

- 15. Prosecution failed to prove the case U/S 376 IPC R/W Section 4 of POCSO Act against accused Rafiqul Islam @ Rakib Ali. Accused is acquitted and set at liberty. He is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, he is allowed to remain in previous bail.
- 16. A copy of this Judgment shall be given to the District Magistrate, Chirang for information.
- 17. Given under my sign and seal of this Court on this the 12th day of July, 2018, at Kajalgaon, Chirang.

Dibysjyph Mahanla (D.J. Mahanta) 12/1/10

Dictated and corrected by me,

(D.J. Mahanta)
Special Judge :=
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<u>APPENDIX</u>

Prosecution witness:

PW 1 – Victim

PW 2 – Musstt. Jabeda Khatun

PW 3 – Musstt. Ajiran Khatun

PW 4 – Md. Atowar Rahman

PW 5 - Md. Anowar Islam

PW 6 – Dr. Meena Hazarika (M.O.)

PW 7 - A.S.I. Nur Hussain Khan (Í.O.)

PW 8 - S.I. Samir Bhushan Banik (I.O.)

Exhibit (Prosecution):

Ext-1 FIR

Ext-2 Statement of the victim U/S 164 Cr.P.C.

Ext-3 Seizure list

Ext-4 Medical report

Ext-5 sketch map

Ext-6 charge-sheet

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta)

Special Judge,
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