

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:::UDALGURI**

**Present : Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Special (POCSO) 49/2019  
U/S 376(3) IPC R/W Section 4 of POCSO Act**

**State of Assam  
-Vs-  
Mainuddin Ali.....Accused.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M.C. Narzary, Learned Advocate.

Date of Evidence : 14-02-20: 04-03-20.

Date of Argument : 07-03-2020.

Date of Judgment : 12-03-2020.

**J U D G M E N T**

1. The prosecution case in brief is that on 04-01-2019, the victim girl lodged an FIR with the Officer-in-Charge of Lalpool Outpost alleging that the accused Mainuddin Ali had sexual intercourse with her promising to marry her and as a result she was conceived by the accused. When people came to know about her pregnancy, the accused said before the people that he would not marry her. Therefore, she lodged FIR against the accused.
2. On the basis of the FIR, Rowta PS Case No. 05/19, under Section 376 IPC R/W Section 6 of POCSO Act was registered. After completion of

investigation Police submitted charge-sheet under Section 376(3) IPC R/W Section 4 of POCSO Act against the accused Mainuddin Ali.

3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 376(3) IPC R/W Section 4 of POCSO Act, learned Special Judge framed charge thereunder and the ingredients of charge under Section 376(3) IPC R/W Section 4 of POCSO Act, were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 04-02-2020, transferred the case to this court for disposal.
4. The prosecution in order to prove its case examined the following 04(four) witnesses:
  - PW1- Victim-A.
  - PW2- Ajgar Ali.
  - PW3- Dr. Bhagirath Dey.
  - PW4- Faruque Ahmed.
5. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
6. Situated thus, the point for determination in the instant case is set up as follows:-
  - (I) Whether the accused committed rape on Victim-A, a woman under 16 years?
  - (II) Whether the accused committed penetrative sexual assault upon the victim-A, aged 16 years?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. M.C. Narzary.
8. Learned defence counsel has argued prosecution has miserably failed to proved the charges under Section 376(3) IPC R/W Section 4 of POCSO Act. Both PW1 and PW2 have deposed that at the time of incident, victim was aged above eighteen years. PW1 had deposed that she had love affairs with the accused and as per her will they had sexual intercourse for which she became pregnant.
9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
10. PW1 is Victim-A, informant of this case. In his evidence PW1 had deposed that she had love affairs with the accused and as a result of sexual intercourse with the accused she became pregnant. But when the family members of the accused and her parents objected to their marriage then out of anger she lodged the FIR against the accused. In course of investigation she was produced before the learned Magistrate who recorded her statement under Section 164 Cr.P.C. She was also physically examined by the Doctor of Udalguri Civil Hospital. Ext.-1 is the FIR. Ext.-1(1) is the signature of PW1. Ext.-2 is her statement recorded under Section 164 Cr.P.C. Ext.-2(1) and 2(2) are the signatures of PW1. At the time of incident she was aged above 18 years. In cross-examination, PW1 had stated that their dispute had been amicably settled. She had no allegation against the accused. The accused did not use force upon her to co-habit with him.
11. PW2 is Ajar Ali, father of the victim girl and uncle of accused. In his evidence PW2 had deposed that his daughter had love affairs with the

accused. They objected to their relationship. Then out of anger she lodged the FIR. Now he had agreed to give her daughter in marriage with the accused. At the time of incident her daughter was aged above eighteen years. In cross-examination, PW2 had stated that before filing of the FIR her daughter eloped with the accused and co-habited with him for about two months. Then he brought her back.

12. PW3 is Dr. Bhagirath Dey. In his evidence PW3 had deposed that on 05-01-2019, he was working as M&H.O1 at Udalguri Civil Hospital. On that day, he examined victim-A, aged 16 years female, vide reference to Rowta PS case 05/19 U/S 376 IPC R/W sec 6 of POCSO Act. The girl was examined in presence of Maidangshree Basumatary. On examination, he found the following:-

Physical examination:-

Height- 142 cm, weight- 30 Kg, teeth- 28 Nos., axillary hair- sparshy grown, pubic hair- sparshy grown, breast- developed, vaginal injury-no injury seen, hymen-ruptured, marks of violence- no ,Clothing's- pink black shallower,

Smear examination vide Red No. UDL 688/2019 shows no spermatozoa seen.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination plate Sl. No. A 951 dated 07.01.2019 shows approximate age 16-17 (Sixteen to Seventeen) years.

Epiphyseal union completed in right wrist joint. Epiphyseal union completed in right elbow joint and not completed in right iliac crest.

Ultrasonography of pregnancy (BHCG) test on 05.01.19 shows positive for pregnancy.

Ultrasonography of Abdomen on 07.01.2019 reported as Single live Embryo of 6 week 5 days of Gest-age.

PW3 had deposed in his opinion:

- i) Urine and ultra sound whole abdomen is positive for pregnancy.
- ii) No sign of violence seen in any part of body.

iii) Intercourse had taken place.

iv) Radiological age is in between 16-17 years.

Ext.3 is the report and Ext.3 (1) is the signature of PW3.

Cross-examination of PW3 had been declined by the defence.

13. PW4 is S.I. Faruque Ahmed, Investigating Officer of this case. In his evidence PW4 had deposed that on the basis of written FIR lodged by Asmina Begum, O/c Rowta PS, SI Dimpal Goyari registered Rowta PS case No. 05/2019 U/S 376 IPC r/w section 6 of Pocso Act and entrusted PW4 to investigate the case. Accordingly, he recorded the statement of the victim girl, visited the place of occurrence, prepared the sketch map and recorded the statement of other witnesses U/S 161 Cr.P.C. PW4 also produced the victim before the CWC. Later on, on being transferred from Lalpool OP, he handed over the case diary to O/c Rowta PS. His successor produced the victim girl before the court for recording her statement U/S 164 Cr.P.C. After completion of investigation, his successor In-charge of Lalpool OP, SI Sarafat Ali submitted charge-sheet against accused Mainuddin U/S U/S 376(3) IPC r/w section 4 of Pocso Act. Ext-4 is the sketch map. Ext-4(1) is the signature of PW4. Ext-5 is the charge-sheet. Ext-5(1) is the signature of SI Sarafat Ali. PW4 was acquainted with his signature.

14. On careful scrutiny of evidence on record it appears that neither the victim girl nor her father adduced evidence against the accused implicating him in the incident of sexual assault upon the victim. What appears from the evidence of PW1, the victim girl and PW2, the father of the victim girl is that victim had love affairs with the accused and the accused had consensual sex with the victim, as a result of which she became pregnant. According to both PW1 and PW2, at the time of incident, victim was aged above eighteen years. It is also found from the evidence of victim and her father that when the family members of the accused and parents of the victim objected to the marriage between the victim and the accused, the victim out of anger lodged the FIR. Thus from the evidence on record it is

found that at the time of incident the victim being a major woman aged above eighteen years was competent to give valid consent and she consented to have sexual intercourse with the accused without any inducement or force. Hence, evidence on record do not reveal any incident of forcible sexual assault upon the victim by the accused. Therefore, I am of the considered view that prosecution has miserably failed to prove the charges under Section 376(3) IPC R/W Section 4 of POCSO Act against the accused Mainuddin Ali.

15. Situated thus the points for determination are decided in the negative and against the prosecution.

### **ORDER**

16. In the result, the accused Mainuddin Ali is found not guilty under Section 376(3) IPC R/W Section 4 of POCSO Act and acquitted of charges under Sections 376(3) IPC R/W Section 4 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.
17. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.
18. Judgment is signed, delivered and pronounced in the open court today the 12<sup>th</sup> day of March, 2020.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**IN THE COURT OF ADDL. SESSIONS JUDGE:.....UDALGURI.**

**Special (POCSO) 49/2019**

**APPENDIX**

(A) Prosecution Exhibits :

- Ext.-1 : FIR.
- Ext.-2 : Statement of victim u/S 164 Cr.P.C.
- Ext.-3 : Medical report.
- Ext.-4 : Sketch map.
- Ext.-5 : Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

- PW1- Victim-A.
- PW2- Ajgar Ali.
- PW3- Dr. Bhagirath Dey.
- PW4- Faruque Ahmed.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N. Talukdar)  
Addl. Sessions Judge.  
Udalguri.