

IN THE COURT OF SPECIAL JUDGE(POCSO) ::NALBARI**Present : Farhana Sultana**

Special Judge, Nalbari.

Date of Judgment : 19-09-2022**SPL. (P) CASE NO. : 02/2022**

U/S Sec. 417/376(3) Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act, 2012.

Complainant : State of AssamRepresented by : Sri K.K Sarma, Ld. Special Public
Prosecutor**Accused : Saijuddin**S/O- Late Miyasan Ali
No 2 Velengimari
PS- Bhangnamari
Dist-Nalbari, Assam.

Represented by : Naba Kr Dutta, Advocate.

1. Date of offence : 24-03-2020
2. Date of FIR : 18-04-2021
3. Date of Charge Sheet : 29-12-2021
4. Date of Framing of Charge : 30-03-2022
5. Date of Commencement of Evidence: 19-09-2022
6. Date on which judgment reserved : Nil
7. Date of Judgment :19-09-2022
8. Date of the Sentencing Order, if any : ---

Accused Details :

Rank of accused	1
Name of Accused	Saijuddin
Date of Arrest	9/12/2021
Date of Release on Bail	20/01/2022
Offences charged with	417/376(3) IPC R/ W Sec 4 of POCSO Act.
Whether Acquitted	Acquitted
Sentence Imposed	Nil
Period of detention undergone during trial for purpose of Sec 428 CrPC	41 days

J U D G M E N T

1. On 18/04/2021 one Jaliluddin lodged an ejahar before the CJM, Nalbari stating inter alia that since many days ago the accused Saijuddin has been disturbing his minor daughter, (hereinafter referred as Victim), aged 15 years with illicit gestures. On 24/03/2020 the daughter of the informant went to the river side to see the goats. The accused was hiding himself in the jute field near river bank. Taking advantage of absence of anybody there, the accused dragged the victim to the jute cultivation and forcefully raped her. The victim tried to shout

but the accused kept a sickle on the neck of victim and threatened to cut her. Thereafter, a number of times accused promised to marry her, raped her and asked her not to tell this fact to anybody. At last the victim told the incident to her mother. A meeting was called in the village regarding this incident. In the meeting, though the accused confessed his guilt, other accused tried to conceal the matter and abused the family members of informant. The accused persons trespassed into the house of informant and tried to destroy it. So, the Informant lodged the ejahar. Hence, this case.

2. On receipt of the ejahar, O/C, Bhangnamari PS registered it as Bhangnamari PS Case No. 14/2021 u/s 376/493/417/120(B)/294/143/147/447/506 Indian Penal Code (hereinafter referred to as IPC). The police went to the place of occurrence and examined the available witnesses & their statements were recorded. Victim's statement u/s 164 Criminal Procedure Code (hereinafter referred to as CrPC) was duly recorded. On completion of the investigation, a prima facie case having appeared against accused Saijuddin, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against him u/s 341/376(3)/506 IPC R/W 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act).

3. Cognizance of offence was taken u/s 341/376(3)/506 IPC R/W Sec. 4 of POCSO Act, 2012 and summon was issued to the accused. On receiving summon, the accused Saijuddin

appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on case record and case diary, a prima facie case having appeared u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act, 2012, charge was framed u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act and the content of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. To prove the offence u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act, 2012, against the accused person, the prosecution side examined 2 witnesses & exhibited only one document including. Considering the evidence of the Informant and victim further examination of other witnesses were dispensed with, as it would not have change the fate of the case. Examination of the accused U/S 313 of Cr.P.C, was dispensed with as not implicated. The accused person's case was that of total denial.

5. The **points for determination** are -

i) Whether the accused on 24/03/2020 at Bhelengimari deceived the victim to have sexual relation with him with a promise of marriage and **thus committing offence u/s 417 IPC ?**

ii) Whether the accused on the same day same place raped the victim, who is under the age of sixteen years and **thus committing offence u/s 376(3) IPC ?**

iii) Whether the accused on the same day same place committed penetrative sexual assault upon the victim, who was

under the age of 18 years **thus committing offence u/s 4 of POCSO Act ?**

Arguments forwarded by Both Sides –

6. Learned Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused did in fact sexually assaulted the victim. He prayed that maximum punishment should be given.

7. On the other hand learned defence counsel has submitted that prosecution has failed to prove the case. There are contradictions in the evidence of both the PWs adduced before the court and the statements of the witnesses recorded u/s 161 and 164 of CrPC. Learned defence counsel has further submitted that the victim has nullified the prosecution case and from the evidence of the victim, no ingredients of offence is made out against the accused. He also, argued that the accused never sexually assaulted or harassed her. So, Court should consider that aspect and accordingly pronounce judgment.

DISCUSSION, DECISION AND REASONS THEREOF

8. I heard the arguments forwarded by the Ld. Special Public Prosecutor and the Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charge u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act,

2012 are analyzed herein below in view of the materials available on record and the argument forwarded by both sides.

9. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

10. **PW 1**, the Informant Jaliluddin has stated that victim is her daughter and he knew the accused person. The incident took place one year ago. His daughter and the accused person were in love with each other. Later on the accused did not agree to marry his daughter. So, first he made a complaint to the villagers but the matter was not settled. So, he lodged this case when the accused married another girl leaving his daughter. The ejahar was written on his direction but at present he does not remember about the contents of the ejahar. His victim daughter had not informed him anything regarding commission of rape on her by the accused. Police did not record his statement.

11. **PW 2**, the victim deposed that informant is her father. She knew the accused person. The incident happened one year ago. She was in love with the accused Saijuddin. He promised to marry her but later on he did not keep his promise and married another girl. So, she informed the matter to her father and her father lodged this case. Police did not record her statement but took her for medical examination. Her statement was recorded by Magistrate.

12. From the evidence of both the Informant and the victim it appears that, there is no ingredients of any of the sections with which the accused is charged. Though in the ejahar, the

Informant has labeled a number of allegations against the accused person, but, in his evidence and also in the evidence of the victim, no such statements are made which would prove those allegations against him. The most important aspect of a case under the POCSO Act is that the victim should be a minor and that Prosecution must adduce conclusive evidence to prove the age of the victim. In this case Prosecution failed to establish through proper documentary evidence that the victim was a minor, aged 15 years as stated in the ejahar. Rather, the Informant has said that, at the time of recording his evidence, the victim was 20 years of age. Record also, revealed that, the victim did not allow medical examination on her.

13. Prosecution has failed to bring home any evidence which will bring home, the charges labeled against the accused, Saijuddin. So, it can be safely held that Prosecution has failed to prove the charge against the accused Saijuddin u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act, 2012.

14. It is pertinent to mention here that, though the POCSO Act provides the adverse presumptions against the accused under sections 29 and 30, to take resort to these adverse presumptions, the basic foundations for prosecution of the accused in the case has to be established. In this case it is clearly seen that the Prosecution has failed to establish the foundational facts against the accused to draw the presumptions provided under section 29 and 30 of the POCSO Act.

15. Accordingly the accused is proved to be not guilty u/s

417/376(3) IPC R/W Sec. 4 of POCSO Act, 2012.

O R D E R

16. From the discussion made above, it is seen that the prosecution has miserably failed to prove the offence u/s 417/376(3) IPC R/W Sec. 4 of POCSO Act, 2012 against the accused. Hence, **accused Saijuddin is found not guilty and is acquitted from the charge of offence u/s 417 /376(3) IPC R/W Sec. 4 of POCSO Act, 2012.**

17. The accused person is set free at his liberty forthwith.

18. Bail bond furnished by the accused shall stand canceled after period of 6 months.

19. The seized articles, if any be disposed of according to law.

Given under my hand and seal of this court on this the 19th day of September /2022.

(Farhana Sultana)

Special Judge
Nalbari

Dictated & corrected by me

Special Judge
Nalbari

APPENDIX
LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

(A) Prosecution:

<u>SI Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
i)	PW 1 : Jaliluddin	Informant
ii)	PW 2 : Sarala Khatun	Victim
(B)	<u>Defence</u>	None
(C)	<u>Court</u>	None

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

(A) Prosecution Exhibits :

<u>Sl.</u>	<u>Exhibit No</u>	<u>Description</u>
i)	Ext P 1/PW 2	: Statement before the Magistrate
ii)	Ext P 1(1)/PW2 and Ext P1(2)/PW 2	: Signatures of PW 2,
(B)	<u>Defence Exhibits</u>	: None.
(C)	<u>Court Exhibits</u>	: None.
(D)	<u>Material Exhibits</u>	: None

(Farhana Sultana)
Special Judge
Nalbari