

DISTRICT : DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - **Shri T. Kalita,**
Special Judge, Dhubri

Special Case No. 50 OF 2019

U/S 6 of POCSO Act, R/w Section 457/376(1) IPC

Corresponding to G.R. Case No. **6060/2018**

State of Assam

...Complainant

Versus

Shofik Kamal @ Shofi
S/O-Tofazzal Hoque
Vill-Subhash Nagar, Ward No. 12
P.S. and District Dhubri, Assam

..... Accused person

Charge framed on : 05-08-2019
Evidence recorded on : 04-09-2019, 03-10-2019
03-12-2019, 19-02-2020
Statement recorded on : 19-02-2020
Argument heard on : 12-06-2020
Judgment delivered on : 16-06-2020

Advocates who appeared in this case

Shri U.K. Sarkar, Special P.P. for the Prosecution

Shri Abdul Latif, Advocate for the Defence

J U D G M E N T

1. The story of the prosecution, as unfolded at the trial, may shortly, be stated that one Khotenza Bibi has filed an FIR with the Officer-In-Charge of Dhubri P.S. on 27-12-2018 that at about 12 at midnight of 26-12-2018 in absence of her husband the accused Shofik Kamal @ Shofik criminally trespassed into her house thereby committed rape on the person of her minor daughter victim X, aged about 8 years. However, she raised alarm and the accused person fled away from the place of occurrence. The condition of the victim girl was very serious for which the case was filed.

2. Police accordingly registered the case being Dhubri P.S. Case No. 1990/2018, under section 448/376-AB IPC, read with section 6 of POCSO Act. The

police completed the investigation and made charge-sheet against the accused namely Shofik Kamal @ Shofi to stand trial under section 448/376 IPC, read with section 6 of POCSO Act.

3. The accused was given copy and formal charge under section 457/376(1) IPC, read with section 6 of POCSO Act was framed and the text of the offence was read over and explained to him to which he pleaded not guilty and claimed for trial.

4. During trial, the prosecution has examined as many as six number of witnesses out of which PW-1 is the informant, PW-2 is the victim, PW-3 is Nur Chand Mahammad, PW-4 is I.O. Mamoni Kumari, PW-5 is one Sona Miah and PW-5 is one Lal Miah.

5. The statement of the accused was recorded u/s 313 Cr.P.C., but his plea is of total denial. However he adduced none.

6. I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following point for determination:

Whether the accused Shofik Kamal @ Shofi committed lurking house trespass into the house of the informant Khoteza Bibi thereby committed rape on the person of her minor daughter X and thereby committed an offence punishable u/s 457/376(1) IPC, read with section 6 of the POCSO Act as so framed against him in earlier occasion?

DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION

ARRIVED THEREON WITH REASONS

7. It has already been stated that the prosecution has examined altogether six number of witnesses out of which PW-1 is one Khoteza Bibi, the mother of the victim girl. According to her, about eight years back, she was sleeping with her children. Her husband was not at her house. She felt that someone entered into her room and accordingly out of fear she started raising alarm by calling her mother-in-law and brother-in-law. But they suspected her that she might have invited

someone in the night to her house and accordingly they forcibly took her to the police station and compelled her to file the case against the accused. She further stated that there is a dispute in between her brother-in-law with that of the accused. The accused did not commit any rape on the person of her daughter. Moreover, the house of her mother-in-law and brother-in-law is about 100 mtrs away from her house. Her daughter was sleeping at the relevant time.

8. PW-2 is the victim girl X. She is aged about 8 years. She could understand the implicacy of evidence adduced by her before the Court of Law. However, she was not given oath because of her age. She categorically evident that her grandmother and uncle taught her to say against the accused. She also stated that her evidence was recorded by the Magistrate wherein she also stated that the accused committed rape on her. However, the accused did nothing with her.

9. PW-3 is one Nur Chand Mahammad. He does not know anything about the occurrence.

10. PW-4 is I.O. Mamoni Kumari. She was entrusted to investigate the case by the Officer-in-charge and accordingly she investigated the case on being handed over the same by SI Gita Sarkar who was transferred during the investigation period. The accused surrendered before her and he was arrested and accordingly she submitted charge-sheet against the accused to prosecute him under section 448/376 IPC, read with section 6 of POCSO Act vide Ext-3. Ext-2 is the FIR received by Officer-In-charge, Dhubri, Kamal Shil which she knows.

11. PW-5 is one Sona Miah. According to him he knows both the parties. One year back, one Khadeja Bibi came to his house and informed that someone entered into her room. Accordingly he visited the house of Khadeja and found that a man was inside the house. But none was coming out. He saw some blood mark on the person of the victim and she was found lying at a place where she was subjected to rape. However, she was taken to hospital by her mother.

12. PW-6 is one Lal Miah who is the father of the victim. According to him, he was in Guwahati on the relevant time and was getting information that his daughter was subjected to rape by some person who entered into her room at the night of

the occurrence. Accordingly he noticed his daughter in sick condition. However, he does not know as to who has committed rape on his daughter. His daughter was therein hospital for 10-12 days.

13. So, these much evidences are available on record. Now having perused the evidences on record it appears that on the night of 26-12-2018, an occurrence took place in the house of the informant namely Khateja Bibi wherein her minor daughter was subjected to rape by somebody. However, she was forced to file the FIR against the accused Shofik Kamal by her mother-in-law and brother-in-law only on the ground that they have enmity with the accused since earlier. The husband of the informant was not at his house. The occurrence took place at midnight on 26-12-2018 and FIR was filed on 27-12-2018. But the victim was medically examined on 30-01-2019. The doctor on being examined the victim girl found her age as 8-10 years, but no adverse remarks was found on her person to the recent assault or sexual intercourse. Though it is stated by PW-6 Lal Miah that his daughter was hospitalized for 10-12 days, but the medico-legal report prepared on 30-01-2019 goes to show that she was not subjected to any assault or rape for which she had to undergo for medical treatment in the hospital for 10-12 days. So, the evidence of PW-6 is found not believable and true.

14. The learned counsel for the Special P.P. has drawn my attention to the statement made by the victim under station 164 Cr.P.C. wherein the victim is alleged to have stated before the Magistrate that Safi entered into her house and then her mother went away for calling her grandmother. At that time, she was subjected to rape by the accused and fled away. But, she has stated categorically in her evidence before the Court of Law that her grandmother and uncle compelled her to say as stated above before the Magistrate while her statement was recorded. She further stated that the accused did nothing. The medico-legal report also found not supporting the version of the prosecution that she was either subjected to rape or assault and had to be there in hospital for a quite sizable period for the fact that her condition was deteriorated after she was subjected to rape. Moreover, the statement of the victim girl that a boy entered into her house and accordingly her mother came out to call for her grandmother and at that time the boy committed rape on her person is found not believable since it is not expected that a mother at

the date at night by leaving her child alone at her house with a person that to hostile to him could come out for getting help instead raising any alarm or hulla by keeping herself inside the room.

15. So, the evidence as it appears goes to show that the FIR and the statement so made by the PW-1 and PW-2 i.e. the mother and the victim are actuated by malice and under compelling circumstances. It is tried that in the criminal jurisprudence, let 99 guilty persons go unpunished, less an innocent person should be held guilty.

16. The prosecution is found to have measurably failed to prove the case beyond all reasonable doubt and situated thus, I have got no other alternative but to acquit the accused Shofik Kamal @ Shofi from the purview of charge under section 457/376(1) IPC, read with section 6 of POCSO Act on benefit of doubt. Thus, the accused is acquitted and set him at liberty forthwith.

17. The liability of the bailor remains in force for next six months as per law.

18. Signed, sealed and delivered in the open Court on this the 16th day of June, 2020, at Dhubri.

(T. Kalita)
Special Judge, Dhubri

Dictated & corrected by me.

(T. Kalita)
Special judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Khateja Bibi (Complainant)

PW-2 Victim-X

PW-3 Nur Chand Mahammad

PW-4 Mamoni Kumari (I.O.)

PW-5 Sona Miah

PW-6 Lal Miah

2. PROSECUTION EXHIBIT:

Exhibit-1 Statement of the victim recorded u/s 164 Cr.P.C

Exhibit-2 Ejahar

Exhibit-3 Charge sheet

(T. Kalita)
Special Judge, Dhubri