

**IN THE COURT OF SESSIONS JUDGE, UDALGURI,
ASSAM**

Sri Mahendra Kalita, Special Judge, Udalguri.

Date of Judgment 6.1.2023

Spl.(POCSO) Case No. 18/2022

U/S 376 IPC R/W Sec. 4 of POCSO Act.

PS- Rowta.

COMPLAINANT:	Rafikul Islam
REPRESENTED BY	Mr. A. Basumatary, Learned P.P.
ACCUSED	Sajidur Rahman, S/O-Yusuf Ali, R/O- Jhakuapara, P.S.- Rowta, Dist-Udalguri.
REPRESENTED BY	Mr. T.C. Boro, Learned Advocate

Date of Offence	11.9.2022
Date of FIR	13.9.2022
Date of Charge Sheet	30.9.2022
Date of Framing of Charge	16.11.2022

Date of commencement of evidence	6.1.2023
Date on which Judgment is reserved	Nil
Date of Judgment	6.1.2023
Date of the Sentencing Order, if any	Nil

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.PC
1	Sajidur Rahman	14.9.2022.	17.11.2022	U/S 376 IPC R/W Sec.4 of POCSO Act	Acquitted	-	2 months 3 days

JUDGMENT

1. Brief fact of the prosecution case is that informant Rafikul Islam lodged the FIR alleging, inter-alia, that on 11.9.2022 at about 12 O'clock midnight the accused Sajidur Rahman forcefully kidnapped his sister (victim) in his bike. When they raised alarm the mobile phone of the accused fell down at the place of occurrence. On 12.9.2022 at night the accused forcefully tried to marry his sister. Then he informed the matter to Borobazar police Out-Post and the police of

Borobazar police Out-Post rescued his sister but the accused fled away. So, the informant prayed for taking necessary action.

2. After receiving the FIR, the In-Charge of Borobazar police Out-Post entered GD entry No.187 dated 13.9.2022 and forwarded the same to Rowta PS for registering a case. The O/C, Rowta PS registered the case bearing Rowta P.S. case No.89/2022 U/S 366 IPC and entrusted the case to SI Bhagya Deka to investigate the case. During the course of investigation the victim was produced before the Magistrate for recording her statement U/S 164 Cr.P.C., accused was arrested and he was forwarded to jail. He also recorded the statement of witnesses and on close of the investigation the I.O. submitted the charge sheet against the accused U/S 366/376 IPC R/W Sec. 4 of POCSO Act. Then the case was taken up for trial.

3. After appearance of accused, copies of all relevant documents were furnished to the accused. Then upon hearing of both sides and upon perusal of the relevant documents the charge was framed U/S 376 IPC R/W Sec. 4 of POCSO Act. Then the contents of charge has been read over and explained to the accused to which accused has pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution has examined only two witnesses including the informant and victim as witnesses. Ld. Counsel for prosecution has verbally submitted to close the evidence as the statement of the victim and informant, who are the vital witnesses in this

case, stated nothing about the incident. On close scrutiny of the record including the statement of the victim, I think prosecution case would not develop even if examine the other remaining witnesses. Examination of accused U/S 313 Cr.P.C. is dispensed with.

5. **Points for determination of the case:-**

(i) Whether the accused committed rape on the victim at the time of occurrence?

(ii) If so, whether the accused committed penetrative sexual harassment on the victim?

Discussion, Decision and reasons for decision:-

6. PW1, Rafikul Islam is the informant. He has stated that on the date of occurrence the accused called his younger sister and took her away to some other place as both of them had developed love affairs. As they could not find out the victim, so he lodged the FIR. Thereafter, the victim was recovered from the residence of accused. Then he came to know from the victim that as she had love affairs with the accused so she eloped with the accused. Subsequently he realized that the FIR was lodged on misunderstanding. He has proved the FIR as Ext-P1. He has also proved the seizure list in respect of seizure of birth certificate and mobile handset of the victim as Ext-P2.

7. During the cross-examination, PW1 has admitted that the matter has been subsequently resolved amicably. He does not want to proceed with the case and he has no objection if accused is acquitted.

8. PW2 is the victim who stated in her deposition that about 2-3 months ago she eloped with the accused as they had developed love affairs. Accused did not take away her forcibly nor he kidnapped her. As she left with the accused without informing her family members so not finding her at the residence her elder brother lodged the FIR. She was produced before Magistrate for recording her statement. She had also stated before the Magistrate that she had developed love affairs with the accused. Accused committed no wrong nor he committed any illegal act with her. She has proved the statement recorded by Magistrate as Ext-P3.

9. In the cross-examination, the victim has admitted that the matter has been subsequently resolved amicably. She willingly left with the accused.

10. From the above discussion of evidence of the victim as well as the brother of the victim, it is found that the informant lodged the FIR due to misunderstanding. Nothing was happened as alleged in the FIR. On the other hand, both the informant and victim do not want to proceed with the case.

11. So, in view of the above position of the fact, my view is that there is no material in the record to prove the ingredients of U/S 376 IPC R/W Sec. 4 of POCSO Act.

12. For the reason stated above, my view is that accused is entitled to acquittal on benefit of doubt. The prosecution has failed to prove the ingredients of offence U/S 376 IPC

R/W Sec. 4 of POCSO Act with the materials beyond reasonable doubt.

13. In the result, the case is decided on acquittal of accused.

ORDER

14. As the prosecution has failed to prove the case beyond reasonable doubt, so accused is acquitted and set him at liberty forthwith.

15. Let a copy of the judgment be sent to the learned District Magistrate, Udalguri for his information as provided in section 365 Cr.P.C.

16. The seized article be returned to its owner in due course of time.

17. Let the case record be consigned to record room after completing the formalities.

18. Given under my hand and seal of this Court on this the 6th day of January, 2023, at Udalguri.

Dictated & Corrected by me

(M.Kalita)
Special Judge, Udalguri.

(M.Kalita)
Special Judge, Udalguri.

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Rafikul Islam	Informant

PW2	X	Victim
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B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
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C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Ext.P 1/PW1	FIR
2	Ext.P2/PW1	Seizure list
3	Ext.P3/PW2	Statement U/S 164 Cr.P.C.

B. Defence:

Sr. No.	Exhibit Number	Description
Nil		

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL		

D. Material Objects:

Sr. No.	Exhibit Number	Description
NIL		

(M.Kalita)

Sessions Judge, Udalguri.

