## IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

## Special (POCSO) Case No.-86/2017

U/S-342 of IPC, r/w Section-6 of the POCSO Act.

State

- Versus -

Rafiqul Islam

: Accused person.

#### Present:

Shri P.P. Bairagi, AJS Special Judge, Nagaon.

#### **Appearance & particulars :-**

For the State : Mr. M.J. Neog, Ld. Special Public Prosecutor.

For the accused person : Mr. P.K. Bora, Ld. Senior Advocate.

Charge framed on : 06/07/2018.

Evidence recorded on : 20/02/2019, 18/12/2019.

Date of Argument : 24/02/2020.

Date of Judgment : 29/02/2020.

#### **JUDGMENT**

- 1. The case of the prosecution in brief is that the informant who is the father of the victim filed First Information Report before the In-Charge of Haiborgaon Town Out Post under Nagaon Sadar Police Station on 12808/2017 stating inter alia that accused Rafigul Islam and accused Ajufa Khatun sometimes forcefully took her daughter for domestic help in their residence. The victim was age about 13(thirteen) years and 6(six) months. Juvenile 'Y' (S/O- Rafiqul Islam who is juvenile in conflict with law) committed rape upon his daughter and threatened her with dire consequences. After 2(two) days of the said incident, juvenile 'Y' again committed rape upon the victim. Accused Rafigul Islam and his wife told that they would give huge amount of money to the victim for not informing anyone about the incident. Juvenile 'Y' again committed rape on his daughter. After 7(seven) days of that incident, accused Md. Rafigul Islam committed rape upon the daughter of the informant and for that reason she became 5(five) months pregnant. Village Mel was held; but nothing was happened.
- 2. On receipt of the said First Information Report, vide Haiborgaon T.O.P. GDE No.-664, dated-28/07/2017 was made and forwarded it to the Officer-in-Charge of Nagaon Sadar Police Station for registering a case under proper section of law. Accordingly, Nagaon Sadar Police Station Case No.-2033/2017 was registered u/s-342/506 of IPC, r/w Section-4 of the POCSO Act. After investigation, Charge Sheet was filed against accused Md. Rafiqul Islam under the aforesaid sections of law, who is facing trial before this court. On the other hand, 'Y' (the son of Rafiqul Islam) is shown as juvenile in conflict with law and the wife of Rafiqul Islam namely- Ajufa Khatun not sent up for trial.

- 3. On appearance of accused Rafiqul Islam before the court of learned Special Judge, Nagaon / Sessions Judge, Nagaon, copy was furnished to him and he was charged u/s-342 of IPC, r/w Section-6 of the POCSO Act. The accused person pleaded not guilty when the charges were read over and explained to him.
- 4. During the trial, the prosecution has examined altogether 3(three) witnesses including the informant as well as the victim of the case and closed the evidence.
- 5. I have heard learned counsels for both the sides and perused the record.

## 6. Now the points for determination are as follows:-

- 1. Whether in the year 2017 in the month of February the accused wrongfully confined the victim 'X' in his house as alleged?
- 2. Whether in the same time the accused committed aggravated penetrative sexual assault on the victim 'X' as alleged?

## 7. **DISCUSSION, DECISIONS AND REASONS THEREOF**

Now let me see the evidence on record.

8. PW-1 who is the father of the victim and informant of the case has deposed that he filed this case against accused Rafiqul Islam and his on 'Y'(juvenile in conflict with law). The incident was occurred

1 ½ years ago. The victim and 'Y' (juvenile) studied together. There was a marpit with each other. As such, with the help of Advocate's Clerk, he filed the First Information Report. This witness was declared as hostile. He was cross-examined also by both sides.

9. PW-2 is the victim 'X' who deposed that she knew accused Rafiqul Islam and his son (juvenile 'Y'). They are neighbours. On the day of incident while she was nearby the house of accused Rafiqul Islam, then one Joynal came and committed bad things with her. Her father lodged the case and she was taken to hospital and her statement was recorded u/s-164 Cr.P.C. Ext.-2 is the statement and Ext.-2(1) and Ext.-2(2) are her signatures. She was 3(three) months pregnant; but her pregnancy was terminated.

During her cross-examination, she has deposed that accused Rafiqul Islam and his son 'Y' (juvenile) had not committed any bad things with her.

10. PW-3 is the mother of the victim who has deposed that as the mensuration of her daughter was stopped, as such she asked her daughter about the reason. Then, her daughter (victim) intimated that accused Joynal committed bad things with her daughter and she was warned by Joinal not to disclose anyone, else Joynal would kill her. Joynal worked in the house of accused Rafiqul Islam. As Rafiqul Islam failed to produce Joinal and helped Joynal to flee away, as such her husband filed the case against Rafiqul Islam and his son 'y' (juvenile).

During her cross-examination, she denied the suggestion that Rafiqul Islam did not help Joynal to flee away.

- 11. Earlier this case was pending before another court of the Special Judge, Nagaon (Sessions Judge, Nagaon) who was pleased to close the evidence of the remaining witnesses on the basis of the prayer made by the learned Special Prosecutor. Thus, the evidence of the prosecution was closed and said court was also vide its order dated-08/01/2020 dispensed with the examination of the accused u/s-313 Cr.P.C. having considered the fact that there is no incriminating material to examine the accused.
- 12. From the evidence of PW-1, it is noticed that he became hostile and he has not implicated the accused person with the alleged offence. On the other hand, the Investigating Officer was not examined by the prosecution to know any contradiction of evidence of this witness which was done by the way of cross-examination by both the sides. On the other hand, the victim has clearly deposed that accused Rafigul Islam was not involved with any bad activity with her. She has nowhere deposed that the accused had wrongfully confined her and committed aggravated penetrative sexual assault with her. The victim has deposed that one Joynal was involved with sexual assault with her; but interestingly enough this loynal is not the accused in this case. From the evidence of PW-3, it is noticed that she gave another story of this case by deposing that as accused Rafigul Islam failed to bring Joynal who worked under him before the victim's family. As such, the case was filed against Rafiqul Islam and his son 'Y'. So, these much of evidence can not be accepted to convict a person. There are insufficient evidence on record to convict accused Rafigul Islam with the alleged offence. No witness has deposed that the accused has committed wrongful confinement and aggravated penetrative assault upon the victim. Therefore, the prosecution has failed to prove its case and by way of cross-examination the accused has demolished the evidence of the prosecution and presumption against him stands

rebutted. Accordingly, the accused is acquitted and set at liberty.

- 13. Bail bond of the accused person will be automatically cancelled after expiry of 6(six) months if no appeal is preferred.
- 14. This Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this court on this  $29^{\text{th}}$  day of February, 2020 at Nagaon.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

## APPENDIX :-

#### Oral evidence :-

- PW-1 Father of the victim (name withheld).
- PW-2 Victim 'X' (name withheld).
- PW-3 Mother of the victim (name withheld).

# Documentary evidence :-

- Ext.-1 Ejahar.
- Ext.-2 Statement of the victim recorded by Magistrate u/s-164

Defence side did not adduce any evidence.

Special Judge, Nagaon.