IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

<u>PRESENT</u> - M.A.Choudhury, Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL CASE NO.7/2017.

Under Sections - 448/ 376/ 511 IPC and U/s 8 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Md. Moizuddin Ali. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Jagneswar Saikia, Public Prosecutor. ... For the State of Assam. Mrs. M.D.G.Baruah, Advocate. ... For the Accused.

Date of charge. :22.08.2017.
Date of taking evidence. :18.07.2018.
Date of hearing Argument. :18.07.2018.
Date of delivery of Judgment.:18.07.2018.

JUDGMENT

1. The case of the prosecution may in brief describe thus:

On 02.11.2016, the informant, Md. Samsul Ali lodged an ejahar with Bihpuria Police Station to the effect that on 02.11.2016 at about 7.30 am, the accused, Md. Moizuddin Ali entered into the house of his elder brother, Md. Solaman Ali taking advantage of absence of other inmates of the house, and thereafter the accused, Moizuddin Ali lifted his niece, victim X, aged about 5 years on the bed and removed her panty and jumped over her body. At that

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time, his niece, the victim X raised commotion and on hearing her commotion, her mother, Musstt. Mamoni Begum and other people came running into the house, and the accused, Moizuddin Ali on seeing them fled away.

- 2. On receiving the ejahar, the Officer-in-charge of Bihpuria P.S. registered a case vide Bihpuria P.S. Case No.819/2016 under Sections 448/376/511 IPC and under Section 8 of the POCSO Act.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence, prepared the sketch map of the place of occurrence and recorded the statement of the witnesses u/s 161 CrPC. The I.O. got the victim X examined by the doctor of North Lakhimpur Civil Hospital. The I.O. also got recorded the statement of the victim X u/s 164 CrPC. In course of investigation, the I.O. arrested the accused, Md. Moizuddin Ali and forwarded him before the court. After completion of the investigation of the case, the I.O. found sufficient incriminating materials against the accused, Md. Moizuddin Ali under Sections 448/ 376/ 511 IPC and under Section 8 of the POCSO Act. Accordingly, the I.O. submitted the charge-sheet against the accused, Md. Moizuddin Ali under Sections 448/ 376/ 511 IPC and under Section 8 of the POCSO Act.
- 4. The accused, Md. Moizuddin Ali made his appearance before the court and necessary copies were furnished to him.
- 5. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient materials against the accused under Sections 448/ 376/ 511 IPC and under Section 8 of the POCSO Act, the charges under Sections 448/ 376/ 511 IPC and under Section 8 of the POCSO Act have been framed against the accused, Md. Moizuddin Ali by my learned predecessor. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 6. In course of trial, the prosecution side examined 4 (four) witnesses.

- 7. The recording of the statement of the accused person under Section 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.
 - 8. The accused person led no evidence in his defence.
- 9. Heard Argument from the learned advocates of both sides. I have perused the case record and the evidence adduced in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Md. Moizuddin Ali on 02.11.2016 at about 7.30 am had committed house trespass by entering into the house of Md. Solamon Ali in order to commit rape upon his minor daughter, victim X?
- (II) Whether the accused, Md. Moizuddin Ali after committing criminal trespass into the house of Md. Solamon Ali attempted to commit rape upon the person of the victim X?
- (III) Whether the accused, Md. Moizuddin Ali committed sexual assault on the victim X?

11. **DECISION AND REASONS**

The prosecution side examined 4 (four) witnesses. PW.1 is the victim X. PW.2 is Musstt. Mamoni Begum, who is the mother of the victim X. PW.3 is Md. Samsul Ali, who is the informant of the case. PW.4 is Musstt. Halima Begum, who is the wife of PW.3, Md. Samsul Ali.

PW.1, the victim X, in her evidence, stated that she knows the accused, Md. Moizuddin Ali. The house of the accused is situated nearby her house. She stated that the accused, Md. Moizuddin Ali had not done anything with her. She also stated that on the day of occurrence, her mother had assaulted her, and for which she was crying. She, in her evidence, did not implicate the accused person regarding commission of any offence against her.

PW.2, Musstt. Mamoni Begum is the mother of the victim X. She, in her evidence, stated that she knows the accused, Md. Moizuddin Ali and the victim X is her daughter. She also stated that the occurrence had taken place about 1 ½ years back in the morning of a day. She, in her evidence, also stated that at the time of occurrence, she had assaulted the victim X by giving some thrash with a broom. After beating her daughter, she left her house for bringing earth and thereafter, when she came back to her house she found the victim X crying and the accused was standing by her side. Shem in her evidence, also stated that the accused often used to come to her house to give air to his bicycle. She also stated that on seeing the victim crying, she supposed that the accused had done something wrong with her daughter, and then she informed the matter to her brother-in-law, Md. Samsul Ali, who lodged the ejahar with Bihpuria P.S. She, in her evidence, further stated that the accused had not done anything with her daughter, victim X. She also stated that her daughter, victim X was crying as she was beaten with a broom. She further stated that the case was lodged on misconception. She, in her evidence, did not implicate the accused person regarding commission of any offence.

PW.3, Md. Samsul Ali, in his evidence, stated that he knows the accused, Md. Moizuddin Ali. The house of the accused is situated nearby his house. He also stated that the victim X is his own niece. He, in his evidence, also stated that the occurrence had taken place about 2 years back in a day at about 8 / 9 am. At the time of occurrence, he was coming from paddy field after tethering cattles and when he came to the house, his sister-in-law, Musstt. Mamoni Begum, the mother of the victim stated to him that the victim X was crying and at that time, the accused was present there and the accused would have done something wrong with the victim X. He, in his evidence, further stated that then he asked the accused regarding the matter and as a result, his quarrelling had taken place with the accused. He also stated that the accused had not done anything wrong with his niece, victim X. He, in his evidence, also stated that he lodged the ejahar with the Police Station on misconception.

This is the evidence adduced by PW.3, Md. Samsul Ali. On perusal of his evidence, I do not find any incriminating material in his evidence against the accused person.

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PW.4, Musstt. Halima Begum is the wife of PW.3, Md.

Samsul Ali. She, in her evidence, stated that she knows the accused, Md.

Moizuddin Ali, whose house is situated nearby her house. She also stated that

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the victim X is her niece. She further stated that she did not know anything

regarding the occurrence as because at the time of occurrence, she was not in

the house. She, in her evidence, also stated that when she returned back, no one

had informed her regarding the occurrence. She, in her evidence, did not

implicate the accused person regarding commission of any offence.

12. Because of what have been discussed and pointed out

here-in-above, it is appeared that the prosecution side has totally failed to prove

the charges under Sections 448/ 376/ 511 IPC and under Section 8 of the POCSO

Act brought against the accused person, Md. Moizuddin Ali and the accused

person deserves to be acquitted.

13. I, therefore, hold the accused person, Md. Moizuddin

Ali not guilty and acquit him from the charges under Sections 448/376/511 IPC

and under Section 8 of the POCSO Act. The accused person is set at his liberty

forthwith.

14. The bail bond of the accused person is cancelled and

his surety is discharged.

15. Given under my hand and the seal of this court on this

the 18th day of July, 2018.

(M. A. Choudhury) Special Judge,

Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury)

Special Judge,

Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

<u>APPENDIX</u>

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Victim X.

PW.2 – Musstt. Mamoni Begum.

PW.3 – Md. Samsul Ali.

PW.4 – Musstt. Halima Begum.

2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>:

Nil.

3. DOCUMENTS PRODUCED IN THE CASE:

Nil.

(M. A. Choudhury) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>