## IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.18/2014 U/S 354 (A)/376 (2)(i)/511 IPC.

[Committed by the Ld. Addl. Chief Judicial Magistrate, Morigaon in G.R. Case No.1786 of 2014]

Present: Md. M. Ahmed,

Sessions Judge, Morigaon.

State of Assam

Vs

Sri Nathuram Mandal,

# **Appearance for the Parties**

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. P. R. Bora, Advocate,

Date of recording evidence :- 04.12.2015.

Date of Argument :- 04.12.2015.

Date of Judgment :- 18.12.2015.

## JUDGMENT

1. Prosecution case in brief is that, on 26.08.2014 at noon time while informant Smti. Anti Dewri wife of Late Lalit Dewri of village No.1 Bangalbori P.S. Jagiroad in the district of Morigaon was not at home leaving her only daughter alone, the victim Miss. X (real name is kept concealed to screen the victim from infamy), then, accused Nathuram Mandal of village Saratpur under Jagiroad P.S. taking advantage of such a favourable situation came to the house of the informant, pulled the victim, exhibited some currency notes and hugged her with a view to molest her sexually. Sensing the ill intention of the

accused, the victim got panicky and she by gathering courage pushed him out of the house and slammed the door behind. It is alleged by the prosecution that the present accused went to the house of the complainant to satiate his greed for sexual gratification. The informant coming back to her home, was apprised of the entire incident by the victim. She agitated this matter before village elders in the hope of getting justice but it did not materialize and the informant having met with failure went to Jagiroad P.S and lodged an Ejahar.

2. On receipt of the same, O/C, Jagiroad P.S registered a case vide Jagiroad P.S. case No.280/14, U/S 448/354(A) of IPC, read with section 12 of POCSO Act. Investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, examined material witnesses, drew up sketch map of the place of occurrence and brought the victim to Morigaon Civil Hospital for her medical examination. However, the victim refuses to undergo medical examination. As such this process could not be completed. The I.O. further arrested the accused and caused him to be produced before the learned Court below, where from he was remanded to Judicial custody. Thereafter, the I.O. having completed the investigation and upon collection of sufficient incriminating materials submitted charge-sheet against the accused Nathuram Mandal for alleged commission of offences U/S 448/354(A) of IPC read with section 12 of POCSO Act. At that time when this charge-sheet was filed the present accused was in jail. Upon his production before the Ld. Court below, he was provided with copies of relevant documents as mandate U/s 207 of Cr.P.C. Thereafter, the Ld. Court below committed the case to this court having found the same to be triable herein. During trial stage, the accused was granted bail. My Ld. Predecessor in court having heard learned Counsel of both sides and basing upon the materials on record framed charges U/s 354 (A)/376(2)(i) of IPC, read with section 511 of IPC and read over and explained the particulars of accusation, to which he pleaded not quilty and claimed to be tried.

#### 3. POINTS FOR DETERMINATIONS:

- (i) In this case it is to be determined, if the present accused on the eventful day by visiting the house of the victim asked for sexual favours from the victim Miss. X by offering money and also embraced her by catching hold of her hand and he attempted to commit rape upon the victim who was then aged below 16 years.
- 4. The prosecution in this case has examined its two most vital witnesses in the form of victim and her mother the informant. But none of them has supported the prosecution allegations on materials points. It rendered examination of the accused after process of recording the evidence of witnesses redundant and it stood dispense with for want of positive evidence. The accused too has declined to adduce evidence in defence. I have heard argument so placed by ld. Counsel of both sides, consider the evidence on record and come to the following decisions.

# **DISCUSSIONS, DECISION AND REASONS THEREOF:**

5. In this case it is alleged by prosecution that on the eventful day the accused taking advantage of solitary of the victim seeking sexual favours from Miss X, the victim by offering money and he attempted to commit rape upon her by embracing her, catching hold of her hands. This allegation is not at all supported by the victim herself. In this case, though the prosecution has claimed that the victim was then aged less than 16 years but no convincing evidence is led to substantiate such claim even the victim in her evidence has negative this claim by asserting that she was then aged about 19 years. If we go by the version of the victim, then there is no escape to the conclusion that the victim was a major girl, more than 18 years of age at the time when the occurrence took place. PW- 1, the victim supports the prosecution case only to the extent that on the eventful day at the relevant time the accused came to her house. However, as regards the rest part of the allegation, such as the accused making advances for sexual favour from her and he attempting to commit rape upon her is totally belied by the victim. She has simply stated that coming to her house the accused asked for a glass of water then she offered him a glass of water. He took water and silently left the place. However, according to this witness the accused at that time behaved in a strange way, he pushed her back. The victim got frightened and subsequently narrated this matter to PW-2 her mother upon her arrival back home. She has further categorically stated that the

accused had not done anything wrong with her. Thus, we have found that the victim has given a complete good bye to the prosecution allegation. According to her, the accused happened to visit her house in the absence of her mother. Then, he asked for a glass of water. It was immediately provided to him, he took water and then silently left the place. However, before leaving that place he conducted himself in a strange way by pushing back the victim. Evidence of PW-2 is not of any better quality. She toed the line of deposition as made by her daughter. According to her, on the eventful day, she was at Jagiroad. She left behind her daughter the victim at home. She returned back home at around 3/3.30 P.M. Then her daughter informed her that the accused came to their house. As because the accused happened to visit the house when the victim was alone, she got frightened. Doubting his conduct this witness filed the case. However, she is very categorically in her evidence has stated that the victim did nothing wrong with her daughter.

6. In this case the victim was the most material witness. However, she refuses to support the prosecution allegation. That being the position, this court is of opinion that the prosecution has miserably failed to prove the case against the accused beyond all reasonable doubts. In the result, the accused is found not guilty and is acquitted and set at liberty forthwith.

Judgment delivered in the open Court on this  $18^{\text{th}}$  day of December, 2015 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

### **APPENDIX**

### A. Prosecution witness

1. PW-1 :- Dipa Dewri,

2. PW-2 :- Anti Dewri,

- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit
- 1. Ext. 1 :- the Ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.