# IN THE COURT OF SESSIONS JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury,

Sessions Judge,

Lakhimpur, North Lakhimpur.

## SESSIONS CASE NO.71(NL)2019.

Under Section – 376(1) IPC.

## **PARTIES**

State of Assam. ... Complainant.

-versus-

Md. Hazarat Ali. ... Accused.

#### **ADVOCATES APPEARED IN THE CASE:**

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mrs. Chitralekha Chutia. Advocate. ... For the Accused.

Date of framing of charge. : 22.05.2019.
Date of taking evidence. : 22.05.2019.
Date of hearing Argument. : 22.05.2019.
Date of delivery of Judgment. : 24.05.2019.

## JUDGMENT

1. The case of the prosecution side may, in brief, be described thus :

The informant, Musstt. Habija Khatun on 27.08.2009 lodged an ejahar with Nowboicha Police Out Post under North Lakhimpur Police Station to the effect that the victim X is her daughter. On 26.08.2009 at about 3.30 pm, her daughter victim X went to the river side situated nearby her house to fetch water. As there was delay in coming back of her daughter victim X into the house, she went

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forward and heard crying of her daughter victim X into the house of the accused, Md. Hazarat Ali. Then, she entered into the house of the accused, Md. Hazarat Ali and found the accused, Md. Hazarat Ali was committing rape upon her daughter victim X. As she raised protest, the accused Md. Hazarat Ali committed 'marpit' upon her person with a stick causing injuries.

- 2. On receiving the ejahar, the In-charge of Nowboicha Police Out Post made a G.D. entry of the same vide Nowboicha Police Out Post GDE No.378 dtd. 27.08.2009 and forwarded the same to the Officer-in-charge of North Lakhimpur Police Station for registering a case under proper sections of Law. On receiving the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide North Lakhimpur P.S. Case No.580/2009 under Sections 341/376/323 IPC.
- 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 statements of the witnesses u/s 161 CrPC. The I.O. got the victim X medically examined by the doctor at North Lakhimpur Civil Hospital. Thereafter, the I.O. forwarded the victim X along with her mother, Musstt. Habija Khatun to the court for recording their statements u/s 164 CrPC, and accordingly, the I.O. got their statements recorded in the court u/s 164 CrPC. In course of investigation, the I.O. failed to arrest the accused, Md. Hazarat Ali as he was evading police arrest. The I.O. after completion of investigation of the case on being found sufficient incriminating materials against the accused, Md. Hazarat Ali under Section 376 IPC RW Sec.4 of the POCSO Act, accordingly submitted the charge-sheet against the accused, Md. Hazarat Ali under Section 376 IPC RW Sec.4 of the POCSO Act showing him as absconder.
- 4. The accused, Md. Hazarat Ali made his appearance before the court and necessary copies were furnished to Contd...

him and the case started to proceed against the accused as a Special case under POCSO Act. The charge u/s 4 of the POCSO Act had already been framed against the accused person, which was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. But, thereafter, on 22.05.2019 the case had been converted from Special (POCSO) case to a Sessions case as on the date of occurrence i.e., on 26.08.2009, the POCSO Act had not come into effect. The POCSO Act came into effect in the year, 2012 with no retrospective effect. Accordingly, the case was renumbered as Sessions Case No.71(NL)2019. Then, after hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the accused person u/s 376(1) IPC, the charge has been framed against the accused person. The charge was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 4 (four) witnesses.
- 6. The recording of the statement of the accused person u/s 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.
- 7. The accused person denied to adduce any evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.

# 10. The point for determination in this case is :

(I) Whether the accused, Md. Hazarat Ali on 26.08.2009 at about 3 pm in his house situated at village Bharalua gaon under North Lakhimpur Police Station, District Lakhimpur, committed rape upon the person of the victim X, a minor girl above the age of 12 years?

#### 11. **DECISION AND REASONS THEREOF**

The prosecution side examined 4 (four) witnesses. PW.1 is the victim X. PW.2 is Musstt. Habija Khatun, who is the mother of the victim X as well as informant of the case. PW.3 is Md. Harej Ali, who is the father of the victim X. PW.4 is Md. Abdul Gofur.

PW.1, the victim X in her evidence stated that the accused, Md. Hazarat Ali is her cousin. The house of the accused, Hazarat Ali is situated nearby her house. She in her evidence also stated that the occurrence had taken place about 10 years back in a day. She also stated that at the time of occurrence, she had gone to the river to fetch water. Then, her altercation had taken place with the accused person. She in her evidence also stated that then she had come back to her house crying and she informed the matter to her mother, Musstt. Habija Khatun and her mother, Musstt. Habija Khatun lodged an ejahar with the Police Station. She in her evidence specifically stated that the accused person had not committed rape on her.

This is the evidence adduced by the PW.1, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.2, Musstt. Habija Khatun is the mother of the victim X as well as informant of the case. PW.2, Musstt. Habija Khatun

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in her evidence stated that the house of the accused, Md. Hazarat Ali is situated nearby her house. She also stated that the victim X is her daughter. She in her evidence also stated that the occurrence had taken place about 10 years back in a day during day time. At the time of occurrence, she was in her house. She also stated that on the date of occurrence at about 3.30 / 4 pm, her daughter victim X had gone to fetch water from the river, which is situated nearby her house. After a while, her daughter victim X came back to the house crying and on being asked, the victim X stated that her altercation had taken place with the accused person nearby the river. She in her evidence also stated that then, she lodged the ejahar with the Police Station. She also stated that the victim X stated to her that the accused person had not performed any sexual act with her ( victim X ). She also stated that she had lodged the ejahar on misconception.

This is the evidence adduced by PW.2, Musstt. Habija Khatun, who is the mother of the victim X as well as informant of the case. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.3, Md. Harej Ali is the father of the victim X. PW.3, Md. Harej Ali in his evidence stated that the victim X is his daughter. He in his evidence also stated that at present, age of his daughter victim X is 26 years. He also stated that the occurrence had taken place about 10 years back. At the time of occurrence, he was not in his house. He in his evidence also stated that on the date of occurrence in the evening, he came back to his house and then, his wife, Musstt. Habija Khatun stated to him that on that day at about 3.30 pm, the victim X had gone to the river to fetch water, which is situated nearby their house, and then the accused, Md. Hazarat Ali had picked up altercation with his daughter victim X. He in his evidence also stated that his wife stated that she had lodged the ejahar against the accused person with the Police Station. He also stated that he

asked his daughter victim X regarding the occurrence, and the victim X stated to him that her altercation had taken place with the accused person. He in his evidence also stated that the victim X had stated that the accused person had not committed rape on her person.

This is the evidence adduced by PW.3, Md. Harej Ali, who is the father of the victim X. There is no any incriminating material in his evidence against the accused person for committing any offence.

PW.4, Md. Abdul Gofur in his evidence stated that he knows the accused, Md. Hazarat Ali, whose house is situated a little distance away from his house. He also stated that he knows the informant, Musstt. Habija Khatun and her daughter victim X. He in his evidence also stated that his house is also situated at a little distance from the house of Musstt. Habija Khatun. He in his evidence also stated that he did not know anything regarding the occurrence of this case. He also stated that on the following day, he came to know from his nearby people that an altercation had taken place between the accused, Md. Hazarat Ali and the victim X.

This is the evidence adduced by PW.4, Md. Abdul Gofur. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing 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 charge under Section 376(1) IPC brought against the accused, Md. Hazarat Ali. The accused person deserves to be acquitted.
- 13. I, therefore, hold the accused, Md. Hazarat Ali not guilty and acquit him from the charge under Section 376(1) IPC. The accused person is set at his liberty forthwith.

\$14.\$ Given under my hand and seal of this court on this the  $24^{\text{th}}$  day of May, 2019.

( M. A. Choudhury )
Sessions Judge,
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

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

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

#### APPENDIX

## 1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Victim X.

PW.2 – Musstt. Habija Khatun, the mother of the victim X as well as informant of the case.

PW.3 - Md. Harej Ali, the father of the victim X.

PW.4 - Md. Abdul Gofur.

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

- 3. <u>DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE</u>: Nil.
- 4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>: Nil.

( M. A. Choudhury )
Sessions Judge,
Lakhimpur, North Lakhimpur.