### IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

<u>Sess. Spl. Case No.29/2014</u> U/S 376 (f) IPC and 4 of POCSO Act.

[Committed by Ld. S.D.J.M. (S), Morigaon in G.R. Case No.139 of 2012]

Present: Md. M. Ahmed,

Sessions Judge, Morigaon.

State of Assam

Vs

Md. Fazar Ali,

# **Appearance for the Parties**

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

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

Md. A. Hoque, Advocate,

Date of recording evidence :- 09.07.2014 and 02.02.2015.

Date of Argument :- 26.08.2015.

Date of Judgment :- 11.09.2015.

#### <u>JUDGMENT</u>

1. Prosecution case in brief is that the informant Musst. Fatema Khatoon, wife of Md. Zamaluddin of village Kukuwari under Mayong P.S. in the district of Morigaon. The victim Miss –X (real name is not mentioned to save her from infamy and ignominy) is the daughter of the informant. The occurrence took place on 11.01.2014 at noon time. At that time along with her friends she was playing in front of the Gate-way of her housed, when the accused lured her under promised of giving her mixture (Chana) took her to his house and subjected her by

sexual assault. The victim came back from his house by crying and she reported the matter to her mother, the informant. On receipt of this information, the informant went to the house of the accused and asked him about the incident, but the accused ill-treat her by using filthy language. So, she informed the matter to Mayong P.S. and lodged an F.I.R. on the very day of the incident.

On receipt of this F.I.R., O/C Mayong P.S. registered a case vide Mayong P.S. Case No.14/14, U/s 376 (f) of IPC, read with Section 6 of POCSO Act against the afore-named accused and investigation was set in motion.

The victim was subjected to medical examination and her statement was recorded U/s 164 Cr.P.C. and the I.O. visited the place of occurrence and drew sketch map of the place of occurrence and completed the investigation of the case. Thereafter, submitted charge-sheet against the afore-named accused U/s 376 (f) IPC, read with Section 6 of POCSO Act. Initially the accused was in jail and subsequently, he got enlarge on bail. Thereafter, the accused attended before the Ld. Court and he was furnished copies of relevant documents as mandate U/s 207 Cr.P.C. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusive triable by this Court. On receipt of the case record, my learned predecessor in Court having heard Ld. Counsel of both sides and basing upon materials on record, framed charge U/s 376 (f) IPC and U/s 4 of POCSO Act and read over and explained the particulars of charge to the accused to which he absurd guilty and claimed for tried.

#### 2. Point for determination:

- (i) If the present accused on or about 11.01.2014 at about 12.00 Noon at Kukuwari village under Mayong P.S. in the district of Morigaon committed rape on victim Miss

   X, aged about 9 (nine) years and at the same time committed penetrative sexual assault on the victim.
- 3. In this case prosecution has examined as many as 4 (four) PWs in all. After the process of recording evidence of the witnesses so adduced by the side of prosecution was concluded, the accused person above named was subjected to examined U/s 313 Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is

of total denial and false implication. According to the accused, the victim took a packet of Chanasur from his shop and thereafter, the victim girl ran away, so, he caught the victim and asked why she took away the packet of chanasur without making payment. But he did not commit any sexual assault upon her and he pleads innocent.

4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

### **DISCUSSION, DECISION AND REASONS THEREOF**

- 5. In this case prosecution has alleged that the afore-named accused on the eventful noon hour, when the victim along with other friends playing in front of the gate-way, the accused lured the victim and took her to his housed and committed sexual intercourse.
- 6. To bring home the guilt of the accused, the evidence of victims are most relevant and it needs closely scrutinized.

We have found from the evidence of the victim girl as PW-2 that she refused to support the prosecution case on material aspects. She has stated in her evidence that she called the accused as 'Nana' and on the eventful day she went to the shop house of the accused to purchase mixer (chanasur), but the accused was absent in his shop, so, she took one packet of mixer (chanasur) and came back, then accused came and caught her on the road, torn her frock and slapped her. So, she cried and reported this matter to her mother. Thereafter, her mother went to the house of the accused and challenged the accused as to why he assaulted the girl. Then, the accused threatened her mother and then her mother filed this case. In her cross-examination, she has stated that the accused did nothing with her except giving her the slap.

7. PW-1 is Musst. Fatema Khatun, she in her evidence also does not support the prosecution allegation. According to her, on the day of occurrence, she was at home and at around 12.00 noon her daughter Miss- X came and told her that she was went to purchase Mixer (chanasur) from the shop house of the accused, but the accused was not present in his shop, so, she took away one packet of mixer (Chanasur) from the shop of the accused and

while she was returned back to her house, the accused came and caught her, torn her cloth and slapped her. Then, the PW-1 went to the accused and asked him about the incident, but he threatened her, so, she filed the F.I.R.

I have subject her evidence in critical analysis and found she did not utter a single word that her daughter was subject to sexual assault by the accused on the day of occurrence. She in her evidence was deposed that when her daughter (victim) took a packet of mixer (Chanasur) from the shop house of the accused in absence of the accused and came back, then the accused caught her daughter and gave a slap, so, she became angry and filed Ext.1 the F.I.R.

- 8. PW-3 is Mustt. Ayesha Khatun and PW-4 is Mustt. Mabiya Khatun, they in their evidence have stated that they have not seen the occurrence, but they have heard that the victim took away a packet of biscuit from the shop house of the accused, when he was absent, so, the accused slapped the victim for her conduct.
- 9. From the evidence available on record, it cannot be held that the accused molested the victim on the eventful day. The evidence surfaced on record shows that the victim went to the shop of the accused and took a packet of mixer (chanasur) without paying any amount and the matter was detected by the accused and then he caught her and slapped her and the mother of the victim lodged the F.I.R. due to anger.
- 10. I have very carefully and attentively evaluate the evidence on record and found that the prosecution has failed to lead evidence to prove the fact that the accused committed sexual assault on the victim. The victim and mother of the victim did not utter a single word about any sexual assault on the victim.
- 11. Thus, in view of the above discussion, I have found that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. In the result, the accused is not found guilty for the offence punishable U/s 376 (f) IPC and Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment delivered in the open Court on this  $11^{\text{th}}$  day of September, 2015 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

## **APPENDIX**

# A. Prosecution witness

- 1. PW-1: Mustt. Fatema Khatun,
- 2. PW-2:- Miss Rahana Khatun,
- 3. PW-3 :- Mustt. Ayesha Khatun,
- 4. PW-4: Mustt. Mabiya Khatun,
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit
- 1. Ext. 1:- the Ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.