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

PRESENT -M.A.Choudhury, Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL CASE NO.30/2016.

Under Sections - 354/307 IPC RW Sec.9(r) of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Sri Sankar Biswas. ... Accused.

APPEARANCE

Mr. Madhab Gogoi, the learned Special Public Prosecutor. For the State. Mr. Suren Bora, the learned Advocate. For the Accused.

Date of charge : 09.05.2017.
Dates of taking evidence : 08.08.2017, 11.09.2017 and 29.05.2018.
Date of hearing argument : 29.05.2018. Date of delivery of Judgment: 29.05.2018.

JUDGMENT

1. The case of the prosecution side, in brief, is as follows:

The informant, Sri Gopal Sarkar on 19.08.2016 at about 1pm lodged an ejahar with the Dolohat Police Out Post under Laluk Police Station to the effect that on 12.08.2016 while he was not in the house, the accused, Sri Sankar Biswas called his daughter, the victim girl 'X' aged about 15 years in his house, and thereafter, after performing sexual intercourse administered poison to

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her. Thereafter, he came to his house and the elder sister of the accused informed him regarding the matter and he went to the house of the accused and found his daughter lying senseless in the cowshed of the accused person. He also found the accused person lying senseless at the cowshed.

- 2. On receiving the ejahar, the In-charge of Dolohat Police Out Post made GD entry of the same vide Dolohat O.P. GD Entry No.276 dtd. 19.08.2016 and forwarded the same to the Officer-in-charge of Laluk Police Station for registering the case under proper Sections of Law and he had taken up the investigation of the case. On receipt of the ejahar, the O.C. of Laluk PS registered the case vide Laluk PS Case No.311/2016 under Sections 376/307 IPC. In course of investigation, the I.O. visited the place of occurrence, recorded the statements of the witnesses u/s 161 CrPC, arrested the accused, Sri Sankar Biswas and forwarded him before the court. The I.O. got the victim girl treated by the doctor and got the victim girl medically examined by doctor. The I.O. also got recorded the statement of the victim girl u/d 164 CrPC. After completion of investigation of the case, the I.O. of the case submitted the charge-sheet against the accused person under Sections 354/307 IPC RW Sec.9(r) of the POCSO Act.
- 3. After hearing the learned advocates of the accused person and perusing the case record, sufficient materials under Sections 354/307 IPC RW Sec.9(r) of the POCSO Act had been found against the accused person in the case record, and accordingly, charges under Sections 354/307 IPC RW Sec.9(r) of the POCSO Act were framed against the accused person. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 4. The prosecution side in course of trial examined Seven witnesses. 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.

- 5. The accused person led no evidence in his defence.
- 6. Heard the Argument from the learned advocates of both

7. The points for determination in this case are :

- (I) Whether the accused person, Sri Sankar Biswas on 12.08.2016 at Sagarpur under Laluk PS used criminal force upon the victim girl intending to outrage her modesty or knowing it to be likely that he would thereby outrage her modesty?
- (II) Whether the accused person administered poison to the victim girl X after committing sexual assault on her person with intention to kill her and under such circumstances that if, by that act, he had caused death of said victim X, he would have been guilty of murder?
- (III) Whether the accused person had committed sexual assault upon the person of the victim girl X and attempted to murder her?

8. **DECISION AND REASONS**:

sides.

PW.1, Sri Gopal Sarkar is the father of the victim girl X. He, in his evidence, stated that the victim girl X is his daughter. The accused, Sri Sankar Biswas is his neighbour. He also stated that the occurrence had taken place one year back in a day. On the day of occurrence, he was in his house and came to know that the son of the accused was ill and then, he went to the house of the accused, Sri Sankar Biswas. When he went to the house of the accused, he found the victim X and the accused were lying on the ground in unconscious state. Then, he took the victim girl X to the hospital for her medical treatment. He, in his evidence, also stated that as the accused family did not bear the medical expenses of the victim girl X, he had lodged the case against the accused person. He, in his cross-examination, stated that he did not know how the victim became unconscious. He also stated that he had lodged the case against the accused person as per advice of others on suspicion. On careful

scrutiny of his evidence, I do not find any material in his evidence against the accused person for committing any offence.

PW.2 is the victim girl X. She, in her evidence, stated that the accused, Sri Sankar Biswas was his neighbour. About one year back in the morning at about 4 /5 am, the accused came to her house and informed her that his son was suffering from illness. She also stated that she went to the house of the accused immediately and after going to his house, she took tea with 'Muree-ladu', and thereafter, she became unconscious. She further stated that she was taken to doctor and her statement was also recorded in the court. The victim girl X was declared hostile by the prosecution and thereafter subjected her to cross-examination. But, the prosecution side has failed to elicit any material from her supporting the case during her cross-examination.

She, in her cross-examination done by the defence side, stated that the accused had not committed any bad acts with her. She also stated that the accused had not administered any poison to her. There is no material against the accused regarding commission of any offence.

PW.3, Sri Rajib Biswas, in his evidence, stated that on the day of occurrence in the morning, on hearing hue and cry in the house of the accused, Sri Sankar Biswas, he went there and saw the accused and the victim girl X lying inside the house. He also stated that he did not know why they were lying on the ground. Thereafter, the accused, Sri Sankar Biswas and the victim girl X were taken to the hospital. He, in his evidence, also stated that he did not know what had happened at the place of occurrence. There is no material in his evidence against the accused person regarding commission of any offence.

PW.4, Sri Khukan Biswas and PW.5, Smti Mina Biswas, in their evidence, stated that on the day of occurrence in the morning, on hearing hue and cry in the house of the accused, Sri Sankar Biswas, they went there and found the accused and the victim girl X lying in unconscious state in the

courtyard of the accused, Sri Sankar Biswas. They, in their evidence, also stated that thereafter both of them were taken to the hospital. They further stated that they did not know how the alleged occurrence had taken place. There is no material in their evidence against the accused person regarding commission of any offence.

PW.6, Smti Asharani Biswas, in her evidence, stated that on the day of occurrence in the morning, the victim girl X had come to her house to pay a visit. She, in her evidence, stated that the victim girl X had prepared tea and took the same and after taking the tea, the victim became unconscious. Thereafter, she was taken to a doctor and she was recovered. She also stated that she did not know anything else. She, in her evidence, did not implicate the accused person regarding commission of any offence.

PW.7, Smti Sobharani Boisnab, in her evidence, stated that she did not know anything regarding the occurrence of this case.

- 9. After careful scrutiny of the evidence adduced by the prosecution witnesses, it is found that the prosecution witnesses examined have not implicated the accused person regarding commission of any offence. 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 354/307 IPC RW Sec.9 (r) of the POCSO Act brought against the accused person, Sri Sankar Biswas and the accused person deserves to be acquitted.
- 10. I, therefore, hold the accused person, Sri Sankar Biswas not guilty and acquit him from the charges under Sections 354/ 307 IPC RW Sec.9 (r) of the POCSO Act. The accused person is set at his liberty forthwith.
- 11. The bail bond of the accused person is cancelled and his surety is discharged.

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 $\label{eq:court} 12. \ \text{Given under my hand and the seal of this court on this}$ the 29^{th} day of May, 2018.

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

Dictated & corrected by me -

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

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Sri Gopal Sarkar.

PW.2 – Victim girl X.

PW.3 – Sri Rajib Biswas.

PW.4 – Sri Khukan Biswas.

PW.5 – Smti Mina Biswas.

PW.6 - Smti Asharani Biswas.

PW.7 – Smti Sobharani Boisnab.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

3. DOCUMENTS PRODUCED IN THE CASE:

Ext.1 – F.I.R.

Ext.2 – Statement of the victim girl u/s 164 CrPC.

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