## IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

# Special Case No.38/2018

State of Assam

Versus

Md Pulak Ray ..... Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr S. Warie

Evidence recorded on : 17.8.2019

Argument heard on : 17.8.2019

Judgment delivered on: 17.8.2019

## JUDGEMENT

1. The prosecution story in brief is that on 03.7.2018 at about 3.15 P.M. the informant Smti Sabita Ray lodged the first information report to the effect that on 03.7.2018 at about 3 P.M. her husband (accused) forcibly tried to commit rape on her minor sister Miss Babita Barman, aged about 15 years taking advantage of absence of her family members in the house. It is stated that the accused assaulted her brother-in-law Sri Sardar Barman and her mother Smti Ruhuni Barman by the bamboo lathi and they sustained injuries on their persons. Hence, the first information report.

- 2. On receipt of the first information report in Kokrajhar Police Station a case has been registered under Kokrajhar P.S. case No.319/18 under sections 325/354 of IPC, Read With section 8 of POCSO Act and the case was endorsed to the ASI Monoranjan Ray for investigation. During investigation the I. O. visited to the place of occurrence, arrested the accused Sri Pulak Ray, medically examined the victim, recorded the statement of the witnesses. The statement of the victim was recorded under section 164 Cr.P.C. and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 324/354 of IPC, read with section 8 of POCSO Act against the accused Sri Pulak Ray. Relevant copies accordingly furnished to the accused person by this court and the charge under section 323 of IPC, read with section 8 of POCSO Act were framed against the accused person finding a prima-facie case. The charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 03 (three) number of witnesses including the informant and the victim as follows:-

PW 1 Smti Sabita Ray (Informant),

PW 2 Miss Babita Barman (Victim) and

PW 3 Smti Rahini Ray.

4. The defence took the plea of total denial and he has not adduced any evidence in support of his case. Recording the statement of the accused person under section 313 Cr.P.C. was dispensed with as there was no incriminating material against the accused person in the testimonies of PWs.

#### 5. **Points for determination:**

(1) Whether the accused voluntarily caused hurt to the victims Sri Sardar Barman and Smti Ruhuni Barman by the bamboo lathi?

(2) Whether the accused committed the offence of sexual assault to the minor victim Miss Babita Barman ?

### **Discussion, Decision and Reasons thereof:**

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, informant of this case deposed that the accused is her husband and on the day of the incident at about 3 P.M. she went to nearby shop when her younger sister Babita and her husband were in her house. She further stated that when she returned home her younger sister was crying and on enquiry she reported that there was a quarrel between her and her husband and her husband about to assault her out of angerness and out of suspicion she lodged the first information report against her husband. In cross she stated that she has no objection if the accused is acquitted from this case and she is living with her husband and due to misunderstanding she lodged the FIR against her husband.
- 8. PW2, victim of this case deposed that the informant is her elder sister and accused is her brother-in-law. She further stated that on the day of the incident in the afternoon she had quarreled with the accused due to some household matters in absence of her sister and the accused was also about to assault her and hence out of fear and angerness she was crying and when her sister saw her crying, she lodged the first information report out of misunderstanding. In cross she stated that her brother-in-law did not misbehave with her and except quarrel no other incident took place and she has no objection if the accused is acquitted from this case.
- 9. PW3, mother of the informant as well as victim of this case stated that the accused is her son-in-law and during the time of incident the

accused was staying in their house and on the day of incident she was not present in the house. She further stated that her younger daughter Babita Barman quarreled with the accused and the accused about to assault her daughter and out of angerness her elder daughter without proper enquiry lodged the first information report against the accused. In cross she stated that the accused did not misbehave with her daughter but, due to misunderstanding her elder daughter lodged the FIR and she has no objection if the the accused is acquitted from the case.

- 10. From the testimonies of the prosecution witnesses it is seen that except a quarrel between the accused and the victim no other incident took place. The victim herself stated that the accused did not misbehave with her. The informant lodged the FIR only out of misunderstanding as she had suspicion on the accused when she saw her sister crying. There is no allegation of any aruct or sexual assault against the accused.
- 11. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Sri Pulak Ray under section 323 of IPC, Read With Section 8 of POCSO Act beyond all reasonable of doubt and hence giving the benefit of doubt, I hereby acquit the accused and set him at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the court on this 17th August/2019 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar