

IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

POCSO Case No. 15/2019 U/S 354 IPC r/w Section 8 of the POCSO Act.

State of Assam

-VS-

Md. Motibur Rahman S/o Md. Mubarak Ali

R/o Village- Belobori Muslimgaon

P.S. – Morigaon

District – Morigaon, Assam. Accused

Date of Charge : 26.09.2019.

Date of Evidence : 20.02.2020.

Date of Argument : 20.02.2020.

Date of Judgment : 20.02.2020.

Appearance for the Parties

Advocate for the State : Mr. A. Kalam, Ld. Special Public Prosecutor.

Advocate for the Accused : Mr. A. Shahnewaz, Ld. Advocate.

Mr. H. Rahman, Ld. Advocate.

JUDGMENT

1. Prosecution case in brief is that on 04.09.2018, the victim 'X' (name withheld) stated to be aged 16 years lodged a FIR with the Morigaon

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Police Station alleging inter-alia that on the previous day i.e. on 03.09.2018, at about 8:00 PM, while she was standing in front of her house, accused Md. Motibur Rahman came there riding a motorcycle and touched her private parts and also torn her wearing clothes. Upon raising hue and cry, when the accused tried to flee away, the locals apprehended him along with his motorcycle.

- 2. On receipt of the FIR, Morigaon PS Case No. 429/2018 u/s 354(A) IPC r/w Section 12 of the POCSO Act, 2012 was registered and investigated into. During investigation, the victim was medically examined and also forwarded to the Court for recording her statement u/s 164 Cr.P.C. The Investigating Officer also seized one motorcycle bearing Registration No. AS-21-E-7921, one Soluwar Kurta and one school certificate of the victim. On completion of investigation, the Investigating Officer (I/O) submitted charge sheet against the accused Motibur Rahman for trial u/s 354 IPC r/w Section 12 of the POCSO Act, 2012.
- It may be mentioned herein that during investigation, the accused was arrested on 04.09.2018, and vide order dated 10.10.2018, he was allowed to go on bail.
- 4. On 01.03.2019, charge sheet was laid before this Court and vide order dated 26.09.2019, charges u/s 354 IPC r/w Section 8 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty.
- During trial, prosecution side examined only two witnesses i.e. the the victim 'X' and her father. Considering the nature of their evidence (PW-1 and PW-2), examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. A. Shahnewaz and Mr. H. Rahman, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE:

- **7.** (I) Whether the accused has committed offence punishable u/s 354 IPC?
 - (II) Whether on 03.09.2018, the victim 'X' was subjected to sexual assault by the accused?

DISCUSSION, DECISION AND REASONS THEREOF

- 8. PW-1, Sri J. Bangthai, the father of the victim in his evidence deposed that, at the time of incident victim was aged about 17 17 ½ years and a student of Class-X. On 03.09.2018, at about 7:00 PM, while his daughter went to roadside for urination, suddenly the accused by driving one motorcycle knocked his daughter. Upon hue and cry, the locals apprehended the accused with his motorcycle. The police was informed and the accused was handed over to police. In his cross-examination, by defence, he stated that at the time of the incident, there was flood and they were taking shelter on the roadside. He also stated that while his daughter sat on the roadside to attend nature's call, suddenly the motorcycle touched her body and she made hue and cry. He was also standing nearby. He had not seen the incident of knocking his daughter by the motorcycle driven by the accused as it was dark. He also stated that the accused did not misbehave with his daughter and presently he has compromised the matter with the accused.
- 9. PW-2, the informant cum victim 'X' in her evidence deposed that she was born in the year 2002. On 03.09.2018, at about 7:00 PM, while she went to roadside for walking, suddenly the accused by driving one motorcycle knocked her from backside. She fell down and got minor injuries. On her hue and cry, locals apprehended the accused with his motorcycle. Then police was informed and the accused was handed over to police. She had lodged one FIR vide Ext. 1. Police took her for medical examination and also brought to the Court for recording her statement. Ext. 2 is her statement given u/s 164 Cr.P.C. In her cross-examination by defence, she stated that at the time of the incident, her sister was with her. She stated that except knocking her with the motorcycle, the accused did nothing with her. Her wearing cloth was torn due to the accident with the motorcycle. She cannot say about the contents of the

FIR as the same was written by other. Without reading the contents of the FIR, she just put her signature. Her father was also standing nearby. She further stated that the accused did not misbehave with her. Presently she has compromised the matter with the accused.

- **10.** Basing on the above evidence on record, let me decide the points. So far age of the victim is concerned, the victim and her father claimed that at the time of incident, the victim was aged about 17 years. This fact remained unrebutted during cross-examination by defence.
- 11. So far point no. II i.e. alleged incident of sexual assault is concerned, from the evidence of the PW-2, the victim cum informant, it appears that she deposed nothing against the accused involving him with the alleged offence of outraging her modesty or committing sexual assault upon her. The victim in her evidence-in-chief clearly stated that on 03.09.2018, at about 7:00 PM, while she went to roadside for walking, suddenly the accused by driving one motorcycle knocked her from backside. She fell down and got minor injuries. On her hue and cry, locals apprehended the accused with his motorcycle. In her cross-examination by defence, she stated that except knocking her with the motorcycle, the accused did nothing with her. Her wearing cloth was torn due to the accident with the motorcycle. Accused did not misbehave with her. PW-1, the father of the victim in his evidence supported the evidence of the victim. Accused by driving one motorcycle knocked his daughter. Upon hue and cry, the locals apprehended the accused with his motorcycle. In his cross-examination, he admitted that he was standing nearby and that accused did not misbehave with his daughter.
- 12. Considering the evidence as discussed above, it is clear that there is nothing in the evidence of PW-1 and PW-2 against the accused for the alleged offence of outraging modesty and sexual assault. In the instant case, ingredient of offence u/s 354 IPC and Section 8 of the POCSO Act, 2012 are totally missing.
- has failed to prove the ingredients of charge U/S 354 IPC and Section 8 of Pocso Case No. 15 of 2019

 Considering above discussion, I am of the opinion that prosecution 8 of Pocso Case No. 15 of 2019

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POCSO Act against the accused Md. Matibur Rahman. As such, accused Matibur Rahman is acquitted from the charges U/S 354 IPC and Section 8 of the POCSO Act, 2012 and set at liberty forthwith.

- **14.** The bail bond executed by accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- **15.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **16.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **17.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 20th day of February, 2020 at Morigaon.

Special Judge, Morigaon, Assam