# IN THE COURT OF SPECIAL JUDGE :: KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.40/2018
U/S.457 IPC & R.W Section8 of POCSO Act

STATE OF ASSAM

Vs

Sri Ruday Brahma @ Gusum

S/O. Sri Binod Brahma

Vill- No.1, Panbari P.S. Gossaigaon Dist. Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P Learned Counsel for the defence Mr. Hiranya Kr. Basumatary

Charge framed on 03.12.2018

Evidence recorded on 20.12.2018; 11.04.2019;

04.06.2019; 02.07.2019; 26.09.2019; 17.12.2019

Argument heard on 04.02.2020 Judgment pronounced on 04.02.2020

### **JUDGMENT**

1. The case of the prosecution is that one Smti. Milita Narzary lodged an writen FIR at Kokrajhar Police Station alleging that on 15.07.2018 at about 1 PM (night), one unknown person entered her rented house and raped her maid servant xxx, aged about 15 years, and when the maid servant shouted,

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she came to her room but the accused managed to escape from the residence.

- 2. On receipt of the FIR, a case under Section 4 of POCSO Act was registered and after completion of the investigation, a charge sheet was laid against the accused Sri Ruday Brahma @ Gusum for commission of offence U/S 457 of IPC, R/W Section 4 of POCSO Act.
- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. After hearing both sides charges under Section- 457 of IPC, R/W Section 8 of POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial prosecution examined 10 (ten ) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

#### 5. POINTS FOR DETERMINATION:-

- (i) Whether the accused house broke into the residence of vicitm with intent to commit her rape?
- (ii) Whether the accused sexually asaulted the victim?

#### **DECISION AND REASONS:**

6. Pw1 Smti. Milita Narzary deposed that she is the informant of this case. The incident took place about 3-4 months ago. She deposed that she came to know the accused only after the incident. She deposed that the

victim xxx used to stay in their house as a domestic help. At about 12.30 – 1 AM in the night, she heard shouts coming from the room of victim. Her room was adjacent to them and hence she immediately came there and asked her to open the door. When she entered into the room she heard the sound of someone going outside. The person entered into her room by cutting the net of the window. The victim reported that the accused committed rape on her.

- 7. In cross examination of Pw1 deposed that she had not seen the person inside the room of victim as he already went out from room. She did not see any injury mark etc on the body of victim and she also did not complain her of any injury.
- 8. Pw2 Sri Sungkharang Brahma deposed that the informant is his wife. He does not know the accused nor has he seen him ever. The incident took place about 4 months ago. On that day he was not present in his house and was on official duty. At about 2 AM his wife informed him about the incident and stated that one thief had entered into their house. On the next day he came and inquired about the matter. Pw 2 deposed that the girl also could not properly identify the person but as per her the person may be a neighbour.
- 9. In cross examination Pw2 deposed that he came to know about the incident from his wife. The victim stated before them that she could not identify the person who entered their house but as per her the person may be resident of their neighbour for which they could not lodge the FIR in the name of the accused.

- 10. Pw3 Sri Raghunath Narzary deposed that he does not know the accused Ruday Brahma. After lodging of FIR, one person was arrested by police and they took him to their house, but at present he could not identify the accused in the Court today.
- 11. In cross examination of Pw3 deposed that the informant told him that one thief entered into their house but he did not enquire about the matter.
- 12. Pw4 Sri Rocky Narzary deposed that he does not know the accused Ruday Brahma. Similar is the evidence of Pw6 Smti. Mala Muchahary and Pw7 Sri Dasharath Brahma.
- 13. Pw5 xxx, victim deposed that she does not know any person named Sri Ruday Brahma. The witness was also shown the accused but she stated that she could not identify him as she could not see the person who committed the offence when the incident took place about one year ago at about 1-30 AM. The victim deposed that one person came into her room breaking the window net of her room. She raised an alarm at which her Aunt came to her room and the accused fled away through the window. She also deposed that the person did not touch her but she woke up hearing noise when he entered into her room.
- 14. In cross examination of Pw5, xxx victim deposed that the FIR was lodged by her Uncle and Aunty. She does not know the contents of the FIR.
- 15. Pw8 Smti. Moni Brahma deposed that she does not know the complainant, Milita Narzary, but she knows the accused. During the time of

incident, the accused was residing in their house. He was working under her husband as an employee. On the day of incident in the night time her husband gave all the dues to the accused as he told that he wants to go home. But in the morning, at about 9:30 AM, police came to their house and enquired about the accused Ruday Brahma and then they came to know that there is an allegation against him that he went to the nearby village and molested one girl.

- 16. In cross examination of Pw8 deposed that they did not know anything about the incident, but came to know about the same only from the police.
- 17. Pw9 Dr. Monisha Boro Phukan deposed that she did not find any injury on the victim.
- 18. Pw10 Sri Monoranjan Roy deposed that on 16.7.2018 he was posted at Kokrajhar Police Station as Attached Officer. On that day one Milita Narzary lodged an FIR which is registered under Kokrajhar P.S. Case No.346/2018 under Section 4 of POCSO Act by the O/C of Kokrajhar Police Station and endorsed him with the case for investigation. Accordingly, he recorded the statements of the informant and victim in the Thana premises and the statements of other witnesses were recorded at the place of occurrence. He visited to the place of occurrence alongwith the Officer-in-charge of Kokrajhar Police Station and he engaged source to apprehend the accused. The victim was medically examined and her statement was also recorded through the learned Magistrate under Section 164 of Cr.PC. After recording the statement the victim was handed over t00 the complainant. But, later on as per

instruction of the Officer-in-charge of Kokrajhar Police Station and considering the age of the victim and also for absence of proper guardian the victim was again produced before the CWC, Kokrajhar. From the available sources they could identify and apprehended accused, he was brought to the Police Station, his statement was recorded and while recording his statement he stated that he opened the net of the window with the help of spoon. Thereafter, they brought the accused to the place of occurrence and spoon is also recovered from that place and it was accordingly seized. Exhibit-4 is the seizure list and Exhibit-4(1) is his signature. After completion of investigation he filed the charge sheet against the accused under Section 457 of IPC and under Section 4 of POCSO Act. Exhibit-5 is the charge sheet and Exhibit-5(1) is his signature.

19. In the cross examination of Pw10 deposed that the victim used to address the informant as Aunt. The victim was kept in the house of the informant as doestic help. The victim gave her statement in the Bodo language and it was interpreted through the help of WPC Konika Narzary. On behalf of the victim the school certificate etc could not be produced and hence her age is determined through the medical examination. The victim read up class-IV or V. The nets of the window were plastic net. They did not send the finger print before the FSL expert for examination as we could not preserved it. The victim was produced before CWC as the case of Choild labour is also registered against the informant. The informant intentionally lodged the FIR only to determine the age of the victim with the help of medical examination to avoid themselves from a case under the Child Labour

Act.

20. The only incriminating circumstances appearing against the accused is

his statement made to the police on the basis of which a spoon was

recovered. The circumstance is extremely weak peice of evidence and it

would not be safe to sustain a conviction of the accused on such evidence

when the victim has not been able to recognize the accused.

21. In view of the above, the point for determination are answered in

negative.

<u>ORDER</u>

Accused Sri Ruday Brahma @ Gusum is acquitted of the charges under

Section 457 IPC & R.W Section- 8 of POCSO Act and set at liberty

forthwith. Accused be released on Judicial Coustody.

Seized MR be destroyed in due course of time.

Given under the hand and seal of this Court on this 4th day of

February, 2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

## <u>Appendix</u>

1. Prosecution Exhibits :-

Exhibit-1 FIR

Exhibit-2 Statement

Exhibit-3 Medical report

Exhibit-4 Seizure list

Exhibit-5 Charge sheet

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Smti. Milita Narzary

P.W.2 Sri Sungkharang Brahma

P.W.3 Sri Raghunath Narzary

P.W.4 Sri Rocky Narzary

P.W.5 victim

P.W.6 Smti. Mala Muchahary

P.W.7 Sri Dasharath Brahma

P.W.8 Smti. Moni Brahma

P.W.9 Dr. Monisha Booro Phukan

P.W.10 Sri Monoranjan Roy

4. <u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge Kokrajhar