# IN THE COURT OF ADDITIONAL SESSIONS JUDGE (FTC), DARRANG :: MANGALDAI.

PRESENT: Mr. J.M.Barman, A.J.S.,

Additional Sessions Judge(FTC),

Darrang, Mangaldai.

# Special (POCSO) Case No. 12 of 2018.

(U/S: 376 of I.P.C. R/W 4 of POCSO Act)

(Forwarded by the learned Chief Judicial Magistrate, Darrang, Mangaldai.)

State of Assam

-Versus-

#### Mainul Hoque,

S/O. Nurul Hoque, Vill.- Bagharbari, P.S. Kharupetia,

Dist.- Darrang (Assam),

..... Accused person.

#### **APPEARANCE:**

Advocate for the State : Sri Dulal Kr. Ghosh, Learned Addl. P.P.

Advocate for the accused : Md. Ayesuddin, Learned Advocate.

Date of framing charge : 20-04-2019.

Date of evidence : 17-05-19, 03-07-19,24-07-19, 18-09-19,

26-11-19, 11-12-19.

Date of argument : 11.12.12

Date of Judgement : 11-12-2019.

# J U D G M E N T PROSECUTION CASE

1. The prosecution story in brief, is that informant Abdul Khaleque lodged an F.I.R. before the Officer-in-Charge of Kharupetia Police Station on 02-05-2018, alleging that one Mainul Hoque, resident of village-Bagharbari Jangalpara is a relative of him and he has visiting terms with

the family of informant. His daughter Salima Khatun was born on 01/07/2003. His daughter Salima Khatun is a student of Class-VII and mixed up freely with the him. One year ago while he was not present at his home , then the accused Mainul Haque, his father Nurul Islam and mother Mamtaz Begum came to his home and requested his daughter to accompany them for visiting some places and they assured her that they had already taken permission from her father. Accordingly, they induced her and took her with them in a public vehicle to Guwahati. On the next day Mainul Hoque along with his family member took her in the residence of the person, where in they pressed his daughter to put her signature on a paper which was already prepared and while his daughter asked them as to why they wanted to take her signature in that paper, then the accused persons stated that signature of Salima is required to stay in Guwhati town. Thereafter, his daughter put her signature on that paper. On that day while his daughter was sleeping then the accused Mainul came and committed rape on her in spite of resistance by his daughter and threatened her to take her life. In this way, the accused repeatedly committed sexual intercourse upon his for a month. Thereafter, the accused persons brought his daughter to his home and promised to solemnize her marriage with accused Mainul Hogue when Salima Khatun attains majority. Later on, it came to their knowledge that the accused Mainul Hogue already solemnized his marriage with another girl. The FIR named accused persons, namely, Mainul Hoque, Nurul Islam, Mamtaz Begum and Hasan Ali threatened his daughter to kill her. His daughter was force to commit sexual intercourse with Mainul Hogue. Xerox copy of birth certificate of his daughter has been enclosed with the FIR. Hence this case.

#### <u>INVESTIGATION</u>

2. After receiving the ejahar from the informant, the officer in charge of Kharupetia P.S. registered a case as Kharupetia P.S.Case No. 146/18, U/S. 343/363/376(3)/34 IPC R/W. Section 6 of POCSO Act and entrusted Mohan Lal Meena, IPS (P) to investigate the case. Upon completion of investigation, the investigating officer after completion of

the investigation has filed Charge-sheet under section 376 (3) of IPC R/W Section 6 of POCSO Act and under section 9 of the Prohibition of Child Marriage Act,2006 against the accused persons, namely, Mainul Hoque, and U/S. 10 and 11 of the Prohibition of Child Marriage Act,2006 against the accused persons, namely, Azizul Hoque, Mafizuddin Ahmed, ) Nurul Islam and Abdul Khaleque to stand trial.

#### **TRIAL**

- 3. After receiving the case record , from learned Chief Judicial Magistrate, Darrang, Mangaldai , by learned Sessions Judge, Darrang Mangaldai , same is registered as Special (POCSO) No. 12 of 2018 and the learned Sessions Judge, Darrang, Mangaldai is pleased to transfer the case record to this court for trial. After appearance of the accused person, copies of the relevant documents were furnished to him and after hearing the submission of the learned Special P.P for the State as well as learned defence counsel on the point of charge and after going through the relevant documents as furnished by the investigating officer under section 173 of Cr.P.C, I have found prima facie material against the accused Mainul Hague under section 376 of I.P.C read with section 4 of POCSO Act. Accordingly, charge under the above mentioned offence was framed against the accused person and contents of the charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried. As I have not found any prima facie materials against the rest of the accused persons namely, Abdul Khaleque, Nurul Islam, Mafijuddin Ahmed and Azizul Hoque Under Section 10 and 11 of of the Prohibition of Child Marriage Act, 2006, I had discharged them from the charge leveled against them.
- 4. In the instant case, the prosecution side has examined as many as 8 (eight) Nos. of witnesses including the investigating officer and medical officer and exhibited some documents. The statement of accused under section 313 Cr.P.C. has been recorded. The plea of the accused is of total denial. However, he has not adduced any evidence in his defence.

### **Points for determination:**

- (i) Whether about one year back from the date of lodging the ejahar the accused committed rape upon the victim X , aged about 15 years, by keeping her in a room at Guwahati for one month and thereby committed an offence punishable under Section 376 of Indian Penal Code ?
- (ii) Whether during the same period and at the same place the accused had committed penetrative sexual assault upon the victim in a room at Guwahati and thereby committed an offence punishable under Section 4 of the POCSO Act ?

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

- 5. I have perused the evidence on record and also heard the submission of learned defence counsel as well as learned Addl.P.P for the State. Let me discuss in brief of the evidence adduced by the prosecution side in the instant case.
- 6. P.W-1 (Takaddus Hussain) is a registered Kazi, deposed that he could not recognized the accused, and He does not know the informant and the victim. He is Registered Kazi, of the office of Kazi, situated at Ward No.2, Mangaldai. On 22-12-2017 one, Mainul Hoque, his parents and Sultana Salima Akram, Advocate went to his office and they had shown him Deed of Declaration of Divorce. A boy named Mainul Haque married a girl named victim (name withheld) and now desired to her Talaq. On 22-12-2017 "Ek Talaq" was given and sent to Salima Khatun by Registered Post. Thus on 25-01-2018 for second time and on 26-02-2018 for third time Talaque Notice were sent to Salima Khatun. But victim did not appear and hence it is presumed to be three talaque.
- 7. In his cross-examination, he admitted that without hearing of the victim one certified copy of Talaqnama was sent to the victim through registered post. He further deposed in his cross-examination that accused person had not shown any valid document marriage to him.
- 8. P.W-2 (name of the victim is withheld due to the nature of the offence) deposed that the informant is her father. The incident took

place about 1½ years back. She knows the accused Mainul Haque. About 1½ years back the accused came to their house with a proposal to marry her. The accused is her related aunt's son. Her father told the accused that he will given marriages of her to the accused after attaining 18 years. But , After 6 months, the accused married another girl. As the accused married another girl, her father lodged the case. About 15 days back the accused and his father came to their house and after compromising the matter, the accused gave her Rs. 30,000/. After lodging the case, police took her to the hospital for treatment. She was brought to the court for recording her statement and she gave her statement. Ext-1 is her statement and Ext-1(1) and Ext-1(2) are her signatures. The accused person did not commit any physical relation with her.

- 9. At this stage this prosecution witness is declared hostile at the prayer of the learned Addl.P.P. she is cross-examined by the prosecution side as well as defence side. In her cross-examination by defence she has stated that she gave her statement before the police as tutored by police. She did not go to Guwahati.
- 10. P.W.3 (Musaraf Hussain) deposed that he knows the complainant and the daughter of the complainant (victim). He also knows the accused person. The incident is of the year 2015. The marriage of the victim took place with Mainul and at the said time she was minor. He does not know if the accused had visiting terms in the house of the complainant before marriage.
- 11. In his cross examination he deposed that he had not seen the birth certificate of the victim, and deposed the age of the victim on presumption.
- 12. PW-4 (Hasan Ali) deposed that he knows the complainant. But does not know the daughter of the complainant. He knows the accused person. He does not know whether accused married the victim girl. But he heard the accused will marry the victim. He does not know whether accused eloped the minor girl to Guwahati.

- 13. His cross-examination is declined by the defence side.
- 14. P.W-5 (Dr. Ajanta Bordoloi), the Medical Officer deposed that on 04-05-2018 she was working as S.D.M & H.O at Mangaldai Civil Hospital and on that day at 4-00 P.M., she examined the victim, 15 years of age, D/O. Md. Abdul Khaleque of Village- No. 3 Galondi, Police Station-Kharupetia , District- Darrang on police requisition in connection with Kharupetia P.S. Case No. 146/18, U/S. 376/343/363/34 IPC, R/W. 6 of POCSO Act, escorted by WPC/65 Binita Deka. The girl was examined in presence of Smti. Nilima Sarma, Staff Nurse, in full consent . On examination she found the following :

Identification Marks: One black mole on left cheek.

History of alleged assault: Reported after 11 months of sexual assault.

History of attenment of Menarche -

History of Menstruation – LMP: On 15-04-2018.

**Physical Examination:** Height –142 c.m., Weight – 37 K.G., Teeth 14/14, Hair- Present, Axillary hair- Present, Pubic Hair – Present, Breast- Developed, Hymen- Torn. Valve- NAD, Uterus- NAD, Vagina-Normal, Libia; Mazora- Normal, Libia: Minara- Normal.

Any injury mark in her private parts- No injury seen on her body and private parts. No sign of Abortion found at present. Mental condition-Normal.

Vaginal swab examination for Spermatozoa- No Spermatozoa was seen as per laboratory report No. 55 (Report enclosed).

Examination of Urine: Pregnancy test – Negative (-ve) (Report enclosed)

### Radiological Examination:

X-ray for age determination- done in Radhika X-ray Center .
 Approximate age- 16-17 (sixteen to seventeen) years. (Report enclosed)

<u>Ultrasonography report :</u> Advised for Ultrasonography of lower abdomen , but Report is not submitted .

# Remarks-

- i) No evidence of recent sexual intercourse.
- ii) Approximate Age is 16-17 years.
- iii) No injury seen on her private parts and body. .
- iv) No comment could be given regarding pregnancy.
- v) No sign of Abortion at present.
- 15. She exhibited the medical report as Ext-2 and her signature Ext-2(1).
- 16. Defence side declined to cross-examine this witness.
- 17. P.W-6 (Abdul Khaleque) deposed that he is the complainant of the instant case. He knows the accused person. The victim is his daughter. The incident took place about 1 ½ years ago. A talk of marriage took place between him and the father of the accused person regarding marriage of his daughter with the accused person. But later on, the accused did not marry his daughter and got engaged with another girl. After coming to know the aforesaid fact, he had lodged the instant case. In the ejahar he had put his thumb impression.
- 18. At this stage this prosecution witness is declared hostile at the prayer of the learned Addl.P.P. Thereafter he is cross examined by the prosecution side as well as defence side. In cross-examination by defence, he deposed that he has not deposed the aforesaid fact before the police.
- 19. PW-7 (Ram Singh Yadav) deposed that he knows Mohan Lal Meena, IPS (P). He on 02/05/2018 had seized one birth certificate of the victim along with one notice of divorce and after seized of the aforesaid articles, he had put his signature in the seizure list. Ext.3 is the seizure

list and Ext-3(1) is his signature. Ext-3 (2) is the signature of Mohan Lal Meena, IPS (P) which he is acquainted with.

- 20. His cross-examination is declined by the defence
- 21. P.W-8 (Tapan Kumar Mandal) is another seizure witness and he deposed that he knows Mohan Lal Meena, IPS (P). On 09/05/2018 he had seized one deed of divorce declaration, original tracing slip of India post, copies of original register "D" maintained under section 12,15 and 22 of Muslim Marriage Registration and divorce Act and after seized of the aforesaid articles, he had put his signature in the seizure list . Ext-4 is the seizure list Ext-4(1) is his signature. Ext-4 (2) is the signature of Mohan Lal Meena, IPS (P) which he is acquainted with.
- 22. In cross-examination he stated that all these above mentioned articles were seized at the police station and he can't say from where the aforesaid articles were brought to the police station.
- 23. The complainant, (PW-6) who is the father of the victim, in his ejahar specifically deposed that accused Mainul eloped with his minor daughter to Guwahati with an intention to marry her and while keeping her in a residence of a person for that purpose, accused person committed forceful sexual intercourse along with his daughter on several times without the consent of her daughter. But while deposing his evidence before the court, he deposed a totally different story compared to the content of the ejahar lodged by him. In his evidence he deposed that a talk of compromise has taken place between him and the father of the accused person, but later on the accused person without marrying his daughter has engages along with another girl, due to which he lodged the instant case. The victim also while adducing her evidence deposed the aforesaid fact. She deposed in her evidence that the accused person who is a distance relative of her family wanted to marry her due to which her father assured him to give her marriage with the accused Mainul after she attain the age of 18 years. But the accused after six months of the aforesaid proposal had married another

girl due to which her father lodged this instant case. She deposed in her evidence that she never went to Guwahati along with the accused person and there is no any physical relation that has taken place between her and accused person. Although both the witnesses and declared hostile by the prosecution side, and cross-examined, but nothing can be elicited from their cross-examination.

- 24. In the instant case the victim was produce before the Judicial Magistrate by the investigating officer for recording her statement under section 164 of CRPC, and the aforesaid statement of the victim recorded by Judicial Magistrate is exhibited by the prosecution side as Exhibit -1. While going through her statement (Ext-1), she deposed that two days the accused person committed rape upon her at Guwahati in the residence of the person. But while adducing her evidence, she deposed that she had given the statement as per the direction of the police personal and she denied of visiting Guwahati along with the accused person. It is well established that in the catena of judgement Hon'ble Apex court as well as Hon'ble Guahati High Court that the statement of a person given under section 164 of CRPC before a Judicial Magistrate is not a substantive evidence. Same can be used only for the purpose of corroboration and contradiction of the statement maker. So the statement of the victim recorded by the Judicial Magistrate under section 164 of CRPC cannot be used as substantive evidence against the accused person. Moreover the victim specifically deposed in her evidence that she adduce the aforesaid statement before the Judicial Magistrate as per direction of the police personal.
- 25. As I discuss earlier in the instant case the allegation against the accused person is under section 376 of IPC read with section 4 of Pocso Act, but there is not a single incriminating material in the evidence of the victim, to prove the ingredient of offence under section 376 of IPC read with section 4 of Pocso Act. The complainant and victim specifically deposed that the case was lodged against the accused person, as he engages with another girl, instead of marrying the victim. Hence I have

SPECIAL (POCSO) CASE NO. 12 OF 2018.

PAGE NO: 10

not found any sufficient material against the accused person under

section 376 of IPC read with section 4 of Pocso Act. In my considered

opinion prosecution side failed to prove the charges against the accused

person under section 376 of IPC read with section 4 of Pocso Act

beyond all reasonable doubts. I therefore, acquitted the accused person

from the above mentioned charges and set him at liberty forthwith. Bail

bond of the accused person shall be valid for next six months from the

date of delivery of the instant judgement.

26. Judgement is delivered in open court.

27. Furnish a copy of the judgement to the district magistrate as

required under section 365 of CRPC.

28. Given under my hand and seal of this court on this the 11<sup>th</sup>

December, 2019 at Darrang Mangaldai.

Sd- J.M Barman Additional Sessions Judge(FTC), <u>Darrang,Mangaldai.</u>

Transcribed and typed by me:

Smti S.Devi. (Stenographer).

(Contd....Appendix)

# **APPENDIX:**

# **Prosecution witnesses:**

PW:1- Takaddus Hussain.

PW:2- Salima Khatun (Victim).

PW:3- Musaraf Hussain.

PW:4- Hasan Ali.

PW:5- Dr. Ajanta Bordoloi (M.O.).

PW:6-Abdul Khaleque (informant ).

PW:7-Ram Singh Yadav.

PW:8- Tapan Kumar Mandal.

# **Prosecution exhibits:**

Ext-1, Statement of the victim recorded U/S. 164 Cr.P.C.

Ext-2, Medical Examination Report.

Ext-3, Seizure-list.

Ext-4, Seizure-list.

## **Defence witnesses:**

Nil.

Sd- J.M Barman Additional Sessions Judge (FTC), <u>Darrang, Mangaldai</u>.