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

PRESENT-M.A.Choudhury, Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL CASE NO.6/2017.

Under Sections - 341/506/376/511 IPC and Under Section - 8 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Md. Babul Hussain. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. Arup Bora, Advocate. ... For the Accused.

on hearing her commotion, local people namely Moina Ali and Moidul Ali came

Date of framing of charge. :22.05.2017.

Date of taking evidence. :08.01.2018, 06.03.2018 & 06.08.2018.

Date of hearing Argument. :06.08.2018.

Date of delivery of Judgment. :06.08.2018.

JUDGMENT

and then the accused, Babul Hussain fled away leaving her there.

1. The case of the prosecution may in brief describe thus: On 09.07.2016 at about 4.30 pm, while the victim X was coming back to her house from the house of Md. Ali Hussain situated in her village by attending a marriage ceremony, at that time, the accused, Babul Hussain caught hold of her and started to take her by force to Dizoo Chapori L.P. School to commit rape upon her person. At that time, she raised commotion and

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- 2. To this effect, the victim X on 10.07.2016 at about 11 am lodged an ejahar with Johing Police Out Post under North Lakhimpur Police Station. The In-charge of Johing Police Out Post, on receiving the ejahar, made G.D. Entry of the same vide GDE No.167 dtd. 10.07.2016 and forwarded the same to the Officer-in-charge of North Lakhimpur PS for registering a case under proper Sections of Law, and he had taken up the charge of investigation of the case. The Officer-in-charge of North Lakhimpur P.S. on receiving the ejahar registered a case vide North Lakhimpur P.S. Case No.718/2016 under Sections 341/ 506/ 376/ 511 IPC RW Sec.8 of the POCSO Act.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared sketch map of the place of occurrence. The I.O. recorded the statement of the witnesses u/s 161 CrPC. In course of investigation, the I.O. got the victim X examined by a doctor of North Lakhimpur Civil Hospital. The accused, Md. Babul Hussain surrendered before the court and he was remanded to the judicial custody. After completion of the investigation of the case, the I.O. found sufficient incriminating materials against the accused, Md. Babul Hussain under Sections 341/ 506/ 376/ 511 IPC and under Section 8 of the POCSO Act. Accordingly, the I.O. submitted the charge-sheet against the accused, Md. Babul Hussain under Sections 341/ 506/ 376/ 511 IPC and under Section 8 of the POCSO Act.
- 4. The accused, Md. Babul Hussain made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, sufficient materials under Sections 341/506/376/511 IPC and under Section 8 of the POCSO Act have been found against the accused person in the case record. Accordingly, charges under Sections 341/506/376/511 IPC and under Section 8 of the POCSO Act were framed against the accused, Md. Babul Hussain by my learned predecessor. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 4 (four) witnesses.
- 6. The recording of the statement of the accused person under Section 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.
 - 7. The accused person led no evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution side in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Md. Babul Hussain on 09.07.2016 at 4.30 pm near Dizoo Chapori L.P. School under North Lakhimpur Police Station had wrongfully restrained the victim X?
- (II) Whether the accused person had criminally intimidated the victim X?
- (III) Whether the accused person thereafter attempted to commit rape upon the victim X?
- (IV) Whether the accused person had committed sexual assault on the victim X?

11. **DECISION AND REASONS**

The prosecution side examined 4 (four) witnesses. PW.1 is the victim X of the case. PW.2 is Musstt. Mojida Begum, who is the mother of the victim X. PW.3 is Md. Harmuj Ali, who is the father of the victim X. PW.4 is Md. Saddam Hussain, who is the relative of the victim X.

PW.1, the victim X stated, in her evidence, that the accused, Md. Babul Hussain is her husband. She has been living with the accused

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person as husband and wife. She also stated that the accused had never committed any wrong to her. She, in her evidence, stated that the occurrence of this case had taken place about 1 ½ years back. She also stated that on the day of occurrence while she was going to a nearby L.P. School, the accused person was sitting in a culvert on the road near the school and thereafter, some boys watching her talking with the accused person, started to abuse them and thereafter handed her and the accused person over to Johing Police Out Post, and then she lodged the ejahar with the Police Station. She further stated that the people suspected that they were in objectionable situation, so they were handed over to the police.

This is the evidence adduced by PW.1, the victim X. On careful scrutiny of the evidence of PW.1, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

PW.2, Musstt. Mojida Begum, in her evidence, stated that the victim X is her daughter and the accused is her son-in-law. She also stated that there was love affairs between the accused person and her daughter. She, in her evidence, also stated that on the day of occurrence, the accused person and the victim X were talking to each other near the school and some boys watching them talking caught them and handed over them to the police. She, in her evidence, stated that at present, the accused and her daughter victim X have been living as husband and wife after they had been married.

This is the evidence adduced by PW.2, who is the mother of the victim X. In her evidence, there is no incriminating material against the accused person for committing any offence.

PW.3, Md. Harmuj Ali, in his evidence, stated that he knows the accused, Babul Hussain. He also stated that the victim X is his daughter and the age of his daughter, at present, is 19 years. He, in his evidence, also stated that there was love affairs between the accused and his daughter victim X and thereafter, he gave marriage of his daughter victim X with

the accused person. He, in his evidence, further stated that at present, his daughter victim X is living in the house of the accused person as his wife.

This is the evidence adduced by PW.3, who is the father of the victim X. On careful scrutiny of the evidence adduced by the PW.3, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.4, Md. Saddam Hussain, in his evidence, stated that the victim is his own niece. He stated that the occurrence had taken place about two years back. At the time of occurrence, he was going to the paddy field to bring back the cattle heads, and then he saw the accused, Babul Hussain and the victim X were talking to each other in front of Dizoo Chapori L.P. School. He, in his evidence, also stated that then the nearby people caught hold the accused and the victim X and handed over them to the police. He further stated that at present, the accused and the victim X have been living together as husband and wife after getting married.

This is the evidence adduced by PW.4. On careful scrutiny of the evidence adduced by the PW.4, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

On careful scrutiny of the evidence adduced by the prosecution witnesses, it is appeared that the prosecution side has failed to prove the charges under Sections 341/506/376/511 IPC and under Section 8 of the POCSO Act brought against the accused person, Md. Babul Hussain and the accused person deserves to be acquitted.

13. I, therefore, hold the accused person, Md. Babul Hussain not guilty and acquit him from the charges under Sections 341/ 506/ 376/ 511 IPC and under Section 8 of the POCSO Act. The accused person is set at his liberty forthwith.

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14. The bail bond of the accused person is cancelled and his surety is discharged.

 $\mbox{15. Given under my hand and the seal of this court on this} \label{eq:15.1}$ the $\mbox{6}^{th}$ day of August, 2018.

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

Dictated & corrected by me -

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

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

<u>APPENDIX</u>

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Victim X.

PW.2 – Musstt. Mojida Begum.

PW.3 - Md. Harmuj Ali.

PW.4 - Md. Saddam Hussain.

2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>:

Nil.

3. DOCUMENTS PRODUCED IN THE CASE:

NIL

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