### **HEADING OF JUDGMENT IN SESSIONS CASE**

District:- Goalpara.

# IN THE COURT OF SPECIAL JUDGE:::::: GOALPARA.

**Present:-** Sri S. Hazarika, A.J.S.

Special Judge, Goalpara.

Spl. Case No.15/18

U/s.17/8/4 of POCSO Act.
In connection with GR Case No.839/19

State -vs-

1. Mosabbir Alom

2.Abdul Jalil MOndal

..... Accused.

#### Ld. Advocates appeared:-

For the State :-Sri S. Sarma, Special Public prosecutor.

For the accused :-Mr. J. Das., A. Jinna and S.Rahman, Advocates.

Date of evidence :-24.01.2019, 14.02.2019, 14.03.2019,

05.04.2019, 07.05.2019, 07.06.2019,21.08.2019

& 04.10.2019.

Date of argument :- 12.12.2019.

Date of judgment :- 23.12.2019

## <u>JUDGMENT</u>

- 1. The informant(prosecutrix) lodged an F.I.R. before O/C of Lakhipur P.S. alleging inter alia that on 11.04.2018 at around 12:30 P.M. while she was returning home from Dumarghat High School, on the public road she met the accused and forcefully took her in his motor cycle. He took her to a room at Lakhipur and after entering the room, accused Musabbir forcefully committed rape upon her and also threatened her with dire consequences. Later on, Police personnel of Lakhipir P.S. rescued her. Further, it is alleged that one unknown person namely, Nur helped the accused in arranging the room. Accordingly, O/C of Lakhipur P.S. registered the case U/S.8/17 of POCSO Act, 2012 against the accused and investigated upon. During the course of his investigation, I/O visited the P.O. and prepared the Sketch Map. The victim was recovered and her statement was recorded through Court U/S.164 of Cr.P.C. The medical examination of the victim was done. The I/O examined the witnesses and arrested the accused persons. After completion of investigation submitted Charge Sheet against the two accused persons.
- 2. Both accused persons appeared and on their appearance copies of documents were furnished. After considering the materials on record and hearing both parties, framed charges U/S.17 of POCSO Act against accused Abdul Jalil Mondal and U/S.4/8 of the POCSO Act against accused Mosabbir Alom. The content of the charges were read over and explained, to which, the accused persons pleaded not guilty and claimed to be innocent.
- **3.** Accused Mosabbir is facing for commission of offence U/S. 4/8 of the POCSO Act and accused Abdul Jalil Mondal is facing trial for commission of offence U/S.17 of the POCSO Act

#### 4. POINTS FOR DETERMINATION ARE :-

- i) Whether the accused Mosabbir Alom committed penetrative sexual assault upon the prosecutrix ?
- (ii) Whether the accused touched the private parts of the victim?

- (iii) Whether the accused Abdul Jalil Mondal abated the commission of rape upon the prosecutrix by accused Mosabbir Alom?
- **5.** Upon conclusion of the evidence of the prosecution side, the statements of the accused persons were recorded U/S.313 of Cr.P.C. wherein they claimed to be innocent and declined to adduce evidence in defence.
- **6.** I have heard arguments advanced by learned counsel for both parties and also gone through the evidence on record. I have also gone through the exhibits proved by the witnesses.

# 7. <u>DISCUSSIONS, DECISIONS, AND REASONS</u> THEREFORE:-

In this case, the prosecution side examined twelve(12) witnesses. Among the witnesses PW1 is the victim as well as the informant of the alleged incident. PW2 is the father of the prosecutrix, PW3 Firoj Khan, PW4 Nur Islam, PW5 Mokibor Rahman, PW6 Bhaskar Das, PW7 Nabin Basumatary, PW8 Sanowar Hussain, PW9 Nozmul Hoquem PW10 Bodiur Zaman are independent witnesses. PW11 Dr. M. Lagachu is the Medical Officer and PW12 is the I/O of the case.

- **8.** Accused Musabbir Alom is facing charges for commission of offence of penetrative sexual assault upon the prosecutrix and accused Abdul Jalil Mondal is facing charge for commission of offence for helping accused Musabbir to commit sexual assault upon the victim. In the FIR the informant alleged that on the date of occurrence while she was returning home accused Musabbir Alom forcefully took her in his motor Cycle and she was taken to a room and she was forcefully raped by accused Musabbir Alom.
- **9.** For the sake of convenience, let me now first discuss the evidence of Medical Officer who is examined as PW11. In her

evidence she stated that on examination the victim she did not find any sign of recent sexual intercourse or no mark of injuries found on her body as well as on her private parts. The Medical Officer proved Ext.6.

The Medical Officer in her evidence did not support the allegations of commission of rape upon the victim. Ext.6 does not show that the victim received any injury on her person as well as on her private parts.

**10.** PW2 is the father of the prosecutrix. He stated that on receipt of information from the P.S. he went there and on reaching there he came to know that the public caught his daughter while she was taking tea in a lodge and accordingly, she was handed over.

PW2 remained silent that the accused has committed any offence upon his daughter. The witness remained silent that the accused persons have done anything wrong with his daughter. Therefore, the evidence of PW2 did not support the prosecution case.

**11.** PW3 Firoj Khan in his evidence stated that on the date of occurrence he met Nur and he inquired as to whether there is any lodge available there and accordingly, he showed a lodge and many persons thereafter gathered in the lodge. Ext.3 is the statement U/S.164 of Cr.P.C.

This witness only stated that he showed a lodge to Nur. He could not say anything as to what happened inside the lodge. Therefore, his evidence is also of no use to prosecution.

12. PW4 Nur Islam stated that 8/9 months earlier at around 11/12 A.M. accused Musabbir Alom called him to Lakhipur bazaar and accordingly he met him. He came in a motor cycle and looked for a lodge and after showing him a lodge he went home.

The witness also proved his statement U/S.164 Cr.P.C. His evidence shows that he only showed lodge to accused Musabbir. He remained silent that the accused has done anything wrong with the victim. Therefore, his evidence is of no use to the prosecution.

**13.** PW5 stated that 8/9 months earlier accused Musabbir came and requested him to go for cinema. Later on, he heard that Police had caught him and thereafter, he gave his statement in the Court, Ext.5.

The evidence of the witness also remained silent regarding occurrence of any incident as alleged in the FIR. The witness remained silent that accused had done anything wrong. Thus, his evidence is of no use to the prosecution.

14. PW6 Bhaskar Das stated that on 11.04.18 at about 11:30 A.M. he was on duty at Lakhipur market. They received an information that some boys caught a girl at lodge. He along with Head constable Nabin Basumatary went to the lodge and on entering the room they found one girl sitting inside the hall and one boy was also found inside the room. Later on, they were taken to P.S.

The evidence of the witness shows that on the date of occurrence he came to know that some boys had caught the girl and the boy. His evidence further shows that public caught a couple. The evidence of the witness also could not say as to under what circumstances the girl was found. Therefore, his evidence did not support the prosecution case that the accused had done anything wrong with the victim.

**15.** PW7 Nabin Basumatary stated that on the date of occurrence at around 12:00 A.M. he was on duty with PW6. On hearing the sound they went to Jolil lodge and on entering the lodge they found one room was under lock and key. One girl was sitting under a bed wearing school uniform. The boy was hiding under the stair case. They caught the boy. They were accordingly, taken to the P.S.

Though PW6 and PW7 together reached at the P.O. but PW6 did not corroborate the evidence of PW7 that they found the girl under a bed and accused was hiding in the stir case. The evidence of PW7 appears to be doubtful as to whether they found the couple as he disclosed in the Court. The evidence of the PW7 also remained silent that they caught the boy under the bed with the

victim.

**16.** PW8 Sanowar Hussain stated that 1 year ago Police looked for a lodge and he accompanied them to the lodge.

Thus, the witness remained silent regarding any incident occurred inside the lodge. Thus, his evidence is of no use to the prosecution.

**17.** PW9 Nozmul Hoque stated that one year ago he was called by O/C and seized the birth certificate of the prosecutrix and took his signature. Exts.3,4 and 5 are the seizure lists.

The witness did not say anything about the alleged incident. He is only the seizure witness whereby the police seized some documents. Thus, his evidence is of no use to the prosecution.

- 18. PW10 Bodiur Zaman stated that one year ago O/C called him to the P.S. and seized the birth certificate in his presence and took his signature. Ext.3 is the seizure list. The evidence of the witness also remained silent regarding involvement of the accused in committing any offence with the prosecutrix. Thus, his evidence is of no use to prosecution.
- 19. Lastly, the evidence of the Investigating Officer who described the steps taken by her during the course of her evidence. During the course of her evidence she proved the seizure lists Ext.3 and 4, Ext.7 and Ext.8. The witness also proved the two Sketch Maps Ext.10 and Rx.11 prepared by her. She proved Ext.12 GD entry No.256 dated 1.04.19 and also proved Charge Sheet Ext.13 submitted by her.
- 20. In the instant case, the accused persons are facing trial for commission of offence under the POCSO Act . Hence, the primary evidence has to come from the victim. The informant is also victim of the alleged incident who is examined as PW1. In her evidence she stated that one year back she came with his friend Mubsabir Alom. They went to the lodge to have a cup tea and the public gathered there as they saw her in school uniform. They were caught on suspicion and taken to P.S. As per version of the public

she lodged the FIR. The witness proved the FIR Ext.1 and her statement Ext.2.

- 21. The star witness was declared hostile and the prosecution cross-examined the witness. Her evidence shows that on the date of occurrence, she went to the lodge with accused Musdabir to have to cup of tea and the public gathered there as she was in school uniform. Further, this witness stated that out of suspicion, the public caught them . They were taken to P.S. Thus, the witness did not support the persecution case. She remained silent that the accused had done sexual assault upon her or she was misbehaved by the accused in any manner. The informant is also the victim of the alleged incident and the primary witness of this case and without her evidence the prosecution case cannot stand. The evidence of the victim does not show that any wrong was done with the victim. Further, the informant has also stated that she lodged the FIR as asked for by the public who gathered there. Thus, the evidence of the witness could not corroborate the allegations that she made in her FIR.
- 22. In this case, none of the witnesses have stated anything regarding the commission of any offence committed by the accused persons upon the victim. The victim also remained silent that any bad thins was done on her. Simply recovery of the victim with the accused Musabbair Alom from inside the lodge does not mean that there was sexual assault upon her.
- 23. In view of the above discussions I find nothing to hold that the accused had done any penetrative sexual assault upon the victim. The medical evidence also does not support the prosecution case.
- 24. The evidence of victim clearly shows that she had good relationship with the accused Mosabbir Alom. Both had gone to the lodge to have a cup of tea. The victim never raises any objection while she remained with the accused. The victim nowhere stated that the accused Mosabbir has committed sexual assault upon the victim.

- **25.** In view of the above discussion, I am of the view that accused persons deserves to be acquitted and accordingly, they are acquitted.
- 26. Given under my hand and seal of this Court on this 23<sup>rd</sup> day of December, 2019.

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

( Sri S. Hazarika, AJS,) Special Judge, Goalpara.

Special Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara.

#### APPENDIX

## **Spl. Case No.15/18.**

## **PROSECUTION WITNESSES:-**

PW1-Informant(victim).

PW2 -Monglu Ram Barman

**PW3-Firoj Khan** 

**PW4-Nur Islam** 

**PW5-Mukibar Rahman** 

**PW6-Bhaskar Das** 

**PW7-Nabin Basumatary** 

**PW8-Sanowar Hussain** 

**PW9-Nozmul HOque** 

**PW10- Bodiur Zaman** 

PW11-Dr. M. Lagachu

PW12-I.O.

#### **DEFENCE WITNESS:-**

NIL

#### **COURT WITNESS:-**

NIL.

## **PROSECUTION EXHIBITS:-**

Ext.1 -F.I.R.

Ext.2-164 Statement of victim.

Ext.3-164 Statement of witness.

Ext.4-Seizure list.

Ext.5-Seizure list.

Ext.6-Birth Certificate.

**Ext.7-Seizure list** 

Ext.8-Seizure list,

Ext.9-Seizure list,

Ext.10-Sketch Map.

Ext.11-Sketch Map.

Ext.12-Extract copy of G.D.Entry.

Ext.13-Charge Sheet.

# **DEFENCE EXHIBITS:-**

NIL

## **COURT EXHIBITS:**

NIL

( S. Hazarika, AJS)
Special Judge, Goalpara.