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

PRESENT - M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.9/2016.

Under Sections – 342/354(D)(ii)/34 IPC and under Section - 12 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

1. Md. Rekibur Ali.

2. Musstt. Halima Begum. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. Eunus Ali, Advocate. ... For the Accused.

Date of framing of charge. : 18.07.2016.

Dates of taking evidence. :30.08.2016, 01.11.2016, 06.12.2016, 24.01.2017,

24.04.2017 and 05.09.2017.

Date of hearing Argument. :07.03.2019. Date of delivery of Judgment. :07.03.2019.

JUDGMENT

1. The case of the prosecution side may, in brief, be described thus :

On 28.03.2014, the informant, Md. Hanif Ali lodged an ejahar with North Lakhimpur Police Station to the effect that the victim X is his minor daughter, who has been reading in class-VI. On

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24.03.2014 at about 3 pm when his daughter victim X was coming to his house from the school, at that time, on the way, the accused, Md. Rekibur Ali took his daughter victim X into the house of his niece at village Borbeel and committed rape upon her person. While the accused was committing rape upon the victim X, a woman of the house of the niece of the accused made video recording of the scene and thereafter, published the video in the social media.

- 2. On receiving the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide North Lakhimpur P.S. Case No.254/2014 under Sections 342/ 354D(ii) IPC and under Section 4 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, prepared sketch map of the place of occurrence and recorded the statements of the witnesses u/s 161 CrPC. The victim X was forwarded to the court for recording her statement u/s 164 CrPC, and accordingly, her statement got recorded u/s 164 CrPC in the court. The I.O. arrested the accused, Md. Rekibur Ali on 19.08.2018 and forwarded him before the court. From the case record, it is found that the other accused, Musstt. Halima Begum was granted Pre-arrest bail by the then Sessions Judge, Lakhimpur, North Lakhimpur. After completion of the investigation on being found sufficient incriminating materials against the both accused, Md. Rekibur Ali and Musstt. Halima Begum under Sections 342/ 354 (D) (ii) IPC and u/s 11 of the POCSO Act, the I.O. submitted the charge-sheet against the both accused, Md. Rekibur Ali and Musstt. Halima Begum under Sections 342/354 (D) (ii) IPC and u/s 11 of the POCSO Act.
- 4. The both accused, Md. Rekibur Ali and Musstt. Halima Begum made their appearance before the court and necessary copies were furnished to them. After hearing the learned advocates of both sides and perusing the case record, my learned predecessor on

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being found sufficient materials against the both accused persons under Sections 342/ 354 (D) (ii)/ 34 IPC and u/s 12 of the POCSO Act in the case record, the charges under Sections under Sections 342/ 354 (D) (ii)/ 34 IPC and u/s 12 of the POCSO Act had been framed against the both accused, Md. Rekibur Ali and Musstt. Halima Begum. The charges were read over and explained to the both accused persons, to which they pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 7 (seven) witnesses.
- 6. The recording of the statement of the both accused persons u/s 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the both accused person in their evidence regarding commission of any offence.
- 7. The both accused persons denied to adduce any evidence in their defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the both accused, Md. Rekibur Ali and Musstt. Halima Begum on 24.03.2014 at about 3 pm in furtherance of their common intention wrongfully confined the victim X, a minor girl in the house of the accused, Musstt. Halima Begum at Borbeel under North Lakhimpur P.S. ?

(II) Whether the both accused persons in furtherance of their common intention after confining the victim X, a minor girl in the house of the accused, Musstt. Halima Begum committed the offence of stalking?

(III) Whether the accused, Md. Rekibur Ali after wrongfully confining the victim X committed sexual harassment upon the victim X?

11. DECISION AND REASONS THEREOF

The prosecution side examined 7 (seven) witnesses. PW.1, Md. Hanif Ali is the informant as well as father of the victim X. According to his evidence, the occurrence had taken place about 2 years back. At the time of occurrence, his daughter victim X was reading in class-VII and she was of 16 years old. PW.1 in his evidence also stated that he came to know that his daughter victim X and the accused, Md. Rekibur Ali were in love and the accused, Md. Rekibur Ali took snap of his daughter in the house of the accused. The victim X used to visit the house of the accused. He also stated that he had lodged the case against the accused as the accused clicked photos of his daughter. From his evidence, it is found that his daughter victim X used to visit the house of the accused. From his evidence, it is also found that there was love affairs between the accused, Md. Rekibur Ali and the victim X, and the accused clicked a photo of the victim X.

On a careful scrutiny of the evidence of PW.1, the informant as well as father of the victim X, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

PW.2, the victim X in her evidence stated that the occurrence had taken place about 2 /3 years back. She also stated that on the date of occurrence, she had not gone to the school. She in her

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evidence also stated that she clicked a photo with the accused in the paddy field near her house. She further stated that she did not inform the matter to her father. Thereafter, her father lodged the case against the accused, Musstt. Halima Begum and Md. Rekibur Ali, who is her distant relative and she has visiting terms with the accused.

This is the evidence adduced by PW.2, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused persons for committing any offence.

PW.3, Musstt. Anwara Begum is the mother of the victim X. She in her evidence stated that at the time of occurrence, she was suffering from illness. She also stated that the accused, Md. Rekibur Ali and her daughter victim X had clicked a photograph.

This is the evidence adduced by PW.3, Musstt. Anwara Begum. There is no any material in her evidence against the accused persons for committing any offence.

PW.4, Md. Babul Ali, PW.5, Musstt. Firoja Begum, PW.6, Md. Jehirul Islam and PW.7, Abdul Subhan in their evidence did not implicate the accused persons regarding commission of any offence.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Sections 342/ 354 (D) (ii)/ 34 IPC brought against the both accused, Md. Rekibur Ali and Musstt. Halima Begum, and under Section 12 of the POCSO Act brought against the accused, Md. Rekibur Ali. The both accused persons deserve to be acquitted.

13. I, therefore, hold the both accused, Md. Rekibur Ali and Musstt. Halima Begum not guilty and acquit them from the charges under Sections 342/ 354 (D) (ii)/ 34 IPC, and I also hold the accused, Md. Rekibur Ali not guilty and acquit him from the charge under Section 12 of the POCSO Act. The both accused persons are set at their liberty forthwith.

14. The bail bonds of the accused persons are cancelled and their sureties are discharged.

 $\,$ 15. Given under my hand and seal of this court on this the 7^{th} day of March, 2019.

(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.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Md. Hanif Ali, the father of the victim X as well as informant of the case.

PW.2 - Victim X.

PW.3 - Musstt. Anwara Begum.

PW.4 - Md. Babul Ali.

PW.5 - Musstt. Firoja Begum.

PW.6 - Md. Jehirul Islam.

PW.7 - Md. Abdul Subhan.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE: NIL.

3. DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE:

Ext.1 - Ejahar. Ext.2 - Statement of the victim X recorded u/s 164 CrPC.

4. DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE: Nil

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