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

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SPECIAL CASE NO.5/2015.

PARTIES

State of Assam. ... Complainant.

-versus-

Md. Rubul Ali. ... Accused.

PRESENT

Md. Imtiaz Ali, Special Judge, Lakhimpur, North Lakhimpur.

APPEARANCE

Mr. Jogeswar Gogoi, the learned Public Prosecutor, for the State.

Mr. Arup Bora, the learned Advocate for the accused.

Date of charge : 17.08.2015.

Dates of

Prosecution evidence : 06.06.2016, 18.07.2016 and 29.08.2016.

Date of statement : 02.01.2017.

Date of argument : 08.02.2017.

Date of Judgment : 23.02.2017.

<u>JUDGMENT</u>

1. Accused, Md. Rubul Ali stands charge under Section 457/ 376/ 511/ 506 IPC RW Sec.8 of the POCSO Act for alleged commission of lurking house trespass by night into the dwelling house of the victim, and attempting to commit rape as well as sexual assault on the victim girl and commission of criminal intimidation to the victim.

Facts of the Case

2. Prosecution allegation as disclosed from the complaint (Ext.1) filed by the victim before the District Magistrate, Lakhimpur, on

11.12.2013, in brief, is that 26.11.2013 at about 2 am, while she was sleeping in her house with her two younger brothers, the accused entered into her house by opening the bolt of the door and committed rape on her by gagging her mouth and threatened her with dire consequence if she dares to inform about the occurrence before anybody, and on the next day in the morning, she informed the matter to her mother, who was at that time in Arunachal Pradesh in connection with her avocation, and thereafter, her mother came home from Arunachal Pradesh and intimated the occurrence to her father and they informed the matter to the villagers, to which the

villagers assured them that they would do the needful, but the accused did

not appear before the village meeting held in this regard and threatened

Investigation

them.

- 3. On receipt of the Complaint (Ext.1), the District Magistrate, Lakhimpur, had forwarded the same to the Officer-in-charge of North Lakhimpur Police Station for registration of a case, and on receipt of the said complaint, the Officer-in-charge of North Lakhimpur PS registered a case bearing North Lakhimpur PS Case No.907/2013 u/s 457/376 IPC. During the course of investigation, the I.O. visited the place of occurrence, prepared the sketch map of the place of occurrence, arrested the accused, recorded the statement of the witnesses, and got the victim girl medically examined, and after completing the investigation, finally submitted charge sheet against accused, Md. Rubul Ali u/s 457/ 376/ 511/ 506 IPC RW Sec.8 of the POCSO Act, 2012.
- 4. Subsequently, the case was committed to the court of the Special Judge by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, vide Order dtd.20.05.2015, as the offence u/s 8 of the POCSO Act is exclusively triable by the court of Special Judge, and accordingly, on appearance of the accused, charges u/s 457/ 376/ 511/ 506 IPC RW Sec.8 of the POCSO Act, 2012 had been framed against him. The charge was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

- 5. The accused in his statement recorded u/s 313 CrPC denied to have committed any crime.
- 6. I have heard Mr. J. Gogoi, the learned Public Prosecutor and Mr. Arup Bora, the learned counsel appearing for the accused.
- Now, the points for determination in this case are Whether the accused, Md. Rubul Ali on 17.08.2015 at about 2 am at village Bharaluwa Nowboicha under North Lakhimpur PS, had committed lurking house trespass by night into the house of the victim in order to commit rape upon the victim girl ? AND Whether the said accused had attempted to commit rape upon the said victim girl while the victim was sleeping with her two minor younger brothers ? AND Whether the accused had committed criminal intimidation by threatening with dire consequences to the victim girl if she discloses the matter to others ? AND whether the accused had committed sexual assault on the said victim girl, as alleged?

DISCUSSION, DECISION & REASONS THEREOF

- 8. To bring home the charge levelled against the accused, prosecution has examined as many as 6 (six) witnesses, namely PW.1, the victim girl, PW.2, the father of the victim girl, PW.3, Mustt. Khaleda Begum, PW.4, Mustt. Nurjahan Begum, PW.5, Mustt. Jamila Khatun and PW.6, Dr. (Mrs.) Queen Baruah, the M.O. of the case.
- 9. Now, let me consider the evidence of PW.1, who is the victim of the case. She deposed that initially, she was in love with the accused and the occurrence took place on 26.11.2013. She also deposed that she had sexual intercourse with the accused as per her own will. She also deposed that she has forgotten what she had stated before the Magistrate and the same statement was given by her as tutored by police. She further deposed that presently, she is living with the accused as his wife.
- 10. During cross examination, PW.1 stated that she had sexual intercourse with the accused as per her own will. She also stated that when she got married with the accused, she was 16 years at that time.

- 11. PW.2, who is the father of the victim girl, deposed that at the time of occurrence, he was in Arunachal Pradesh. He also deposed that his victim daughter that there was love affairs between her and the accused, but subsequently, as the accused refused to marry his victim daughter, for which the victim lodged the case against the accused. He also deposed that at the time of occurrence, his victim daughter was 16 years old.
- 12. PW.3, Mustt. Khaleda Begum deposed that she came to know that there was quarrel between the victim and the accused.
- 13. PW.4, Mustt. Nurjahan Begum deposed that she did not know anything about the occurrence.
- 14. PW.5, Mustt. Jamila Khatun deposed that she came to know that the accused wanted to take away the victim.
- 15. PW.6, Dr. (Mrs.) Queen Baruah, the M.O. of the case, deposed that on 13.12.2013, she had examined the victim girl at North Lakhimpur Civil Hospital, and found as follows:

Identification mark: one black mole on the right side of the nose.

Height: 5 ft. Weight: 40 kg.

Teeth: 24 nos.

Breast: well developed.

Axilary and pubic hair: present.

Vulva – healthy. Vagina : admits one finger. Hymen – absent. Uterus –NAD.

On laboratory examination, no spermatozoa seen. On ossification test, age of

the victim was found to be more than 17 years and below 18 years.

- 16. The M.O. had opined that the age of the victim girl was above 17 years and below 18 years, and there was no sign of recent sexual intercourse.
- 17. Considering the evidence as above on record, it is seen that none of the prosecution witnesses including the victim (PW.1) has

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supported the allegation made in the complaint (Ext.1). PW.1, the victim in her evidence before this court has clearly stated that she was in love with the accused and she on her own volition had sexual intercourse with the accused. The victim (PW.1) also stated that what she had stated before the Magistrate was a tutored one, and presently, she is living with the accused as his wife. PW.2, who is the father of the victim, has clearly stated that his victim daughter informed him that there was love affairs between her and the accused, but subsequently, the accused refused to marry her, for which his victim daughter lodged the ejahar against the accused. PW.3 simply heard that there was guarrel between the accused and the victim girl. PW.4 has no knowledge about the occurrence. PW.5 came to know that the accused tried to take away the victim. So, none of the prosecution witnesses has raised any accusing finger towards the guilt of the accused as alleged by the victim in her complaint (Ext.1). From the evidence of the victim (PW.1), it appears that presently, both the accused and the victim have been living together as husband and wife. The accused also in his statement u/s 313 CrPC has stated that presently, the victim is living with him as his wife. So, it is crystal clear from the evidence of the victim and her father that there was love affairs between the accused and the victim, and as the accused refused to marry her, for which the case was lodged, but subsequently, the accused had married the victim and they are now, living together as husband and wife. Now, coming to the question relating to the age of the victim girl, it is seen that the victim herself stated that she was 16 years old at the time of occurrence and her father (PW.2) also stated that the victim girl was 16 years at the time of occurrence. In this regard, the medical evidence reveals that the age of the victim at the time of occurrence was more than 17 years but below 18 years. So, it can be presumed that the age of the victim at the time of occurrence was about 16/17 years. As discussed above, prosecution has not been able to bring out the actual age of the victim girl by way of any supporting document, and there is nothing on record to disclose the actual date of birth of the victim. Mere assertion that the victim was a minor cannot itself sufficient in the background to hold that the victim herself was a minor at the relevant time of the incident as because the medical evidence given by

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PW.6 that the victim was aged above 17 years and below 18 years and this age may vary by two years on either side. Having regard to the above evidence, the age of the victim was above 16 years but below 17 years on the date of alleged incident and if we add two years, age of the victim will certainly be more than 18 years at the relevant time. The victim was a major girl though she had not touched 18 years of age as per medical evidence. In absence of such conclusive evidence with regard to the age of the victim and having regard to the fact that the victim got married with the accused and presently, living with the accused as his wife, as discussed above, conviction cannot be said to be maintainable merely on presumption and assumption. It is more so in view of the fact that the victim was a consenting party and had sexual activities with the accused on her own accord in the face of medical evidence that she was above 18 years, the accused cannot be convicted under the charged sections of law. Further, she has stated a different story from what was there in her ejahar and statement before the police and the Magistrate.

18. That being so, this court is of the view that the prosecution has miserably failed to bring home the charge levelled against accused, Md. Rubul Ali beyond all reasonable doubt. Accordingly, I find the accused not guilty under the charged sections of law, and thus, I acquit him and set him at liberty forthwith if not required in any other case.

Judgment is pronounced and delivered in open court under seal of this Court with my signature on this 23rd February, 2017.

(I. Ali) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>

Dictated & corrected by me -

(I. Ali) Special Judge, <u>Lakhimpur, North Lakhimpur.</u> Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1) PROSECUTION WITNESSES:

PW.1 - Victim girl.

PW.2 - Father of the victim girl.

PW.3 - Mustt. Khaleda Begum.

PW.4 - Mustt. Nurjahan Begum.

PW.5 - Mustt. Jamila Khatun.

PW.6 - Dr. (Mrs.) Queen Baruah, the M.O. of the case.

2) List of Exhibits:

Ext.1 - F.I.R.

Ext.2 - Statement of the victim.

(I. Ali) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>