#### IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.20/2015 U/S 342/376 IPC, R/W Section 4 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Sri Sanjib Nath ..... Accused

:- 16.10.2015.

Date of recording evidence :- 02.11.2016.

Date of Argument

Date of Charge

:- 06.12.2016.

Date of Judgment

:- 08.12.2016.

#### **Appearance for the Parties**

Advocate for the State:-

Mr. A. Kalam, Ld. P.P.

Advocate for the accused:- Mr. P. R. Borah, Ld. Advocate,

### <u>JUDGMENT</u>

1. In this case, the prosecution has alleged that a 12 (twelve) years old girl fell a victim to sexual assault at the hand of accused. The accused is one Sri Sanjib Nath of village Habibarangabari, P.S. Mikirbheta, Dist. Morigaon (Assam). The informant Sri Rama Kanta Borkakati is also a resident of this village. He is the father of the victim, Miss X (the real name of the victim kept conceal to save her from infamy). According to the prosecution, on 07.06.2015 in the morning hour at around 6.30 A.M., the above-named accused by luring the victim took her to his shop and by gagging her mouth subjected her to sexual intercourse. The victim cried out in panic. Then, on hearing hue & cry, Purnananda Borkakoti, the brother of the informant rushed there and he rescued the girl from the grip of the accused. On the very day, the informant went to Mikirbheta P.S. and he lodged an F.I.R. On the basis of which, the O/C Mikirbheta P.S. registered a case vide Mikirbheta P.S. Case No.210/15, U/s 376 (2) (i)/420/342 IPC, read with Section 4 of the POCSO Act.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, examined the victim as well as other material witnesses and also got the victim medically examined and got her statement recorded U/s 164 Cr.P.C. The I.O. arrested the accused and produced before the learned Court below, wherefrom, he was remanded to judicial custody. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the abovenamed accused with allegation of offences punishable U/s 376 (2) (i)/420/342 of IPC, read with Section 4 of POCSO Act. At the time of submitting the chargesheet, the accused was languishing in jail hajot. Subsequently, he was let off on court bail and thereafter, the present accused attended before the Ld. Court and he was furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. On receipt of the case record and after having heard Ld. Counsel of both sides and basing upon materials on record my learned predecessor framed charges U/s 342/376 of IPC, read with Section 4 of POCSO Act, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

#### 2. Point for determination:

- (i) In the instant case, it is to be determined that on the eventful day i.e. on 07.06.2015 at around 6.30 A.M. at village Habibarangabari under Mikirbheta P.S. in the district of Morigaon, the accused wrongfully confined the victim and thereby he committed rape upon 12 years old, a minor girl and thereafter, she was subjected to penetrative sexual assault against her will.
- 3. In this case prosecution has examined only 2 (two) PWs, the most material witnesses of this case, the informant as PW-1 and the victim as PW-2. But their evidence does not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the

remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for ends of justice. The accused declined to adduce defence evidence.

4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

# **DISCUSSION, DECISION AND REASONS THEREOF**

5. In this case, it is alleged by the prosecution that on the eventful day the above-named accused coaxed the victim and took her to his shop and by gagging her mouth committed rape on her and at that time, the victim was 12 years old girl.

To prove this fact, the prosecution initially examined PW-1, the informant. He in his evidence has stated that the victim Miss- X is his daughter and the accused is also known to him. The occurrence took place on 07.06.2015 at about 6.30 A.M. He has further stated that he had a shop near his house and on the day of occurrence his daughter, the victim Miss-X came to sweep the floor of the shop and she swept the garbage in front of the shop of the accused, which was adjacent to his shop. Then, the accused rebuked his daughter using filthy language. So, he (PW-1) filed a criminal case against the accused. In his cross-examination, he has stated that he has not seen the actual occurrence and the accused did not use any indecent word to his daughter, the victim. PW-1 stated that the accused simply abused her and stopped her to throw the garbage towards his shop.

6. PW-2, the victim girl, she in her evidence has stated that the informant is her father. On the particular day, she went to sweep the floor of their shop situated near their house and while, she sweeping the floor of the shop some of the garbage were swept away towards the shop of the accused and then, the accused got offended and quarreled with her. She in her cross-examination has stated that the accused did not behave her indecently.

Thus, we have found that none of these two vital PWs (i.e. complainant and victim) uttered a single word as regards sexual assault being allegedly committed by the accused.

- 7. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim herself stated that the accused did nothing wrong to her. So, we have found that the most material witness of this case as PW-1 & PW-2 did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. mandates an acquittal of the accused from an offence, which states that " If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."
- 8. In view of the above discussion and in view of Section 232 Cr.P.C., I have found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 342/376 of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this  $8^{\text{th}}$  day of December, 2016 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

#### **APPENDIX**

## A. Prosecution witness

1. PW-1: - Sri Ramakanta Borkakati,

2. PW-2: - Miss Karishma Borkakati,

- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit:
- 1. Ext.1 :- the ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.