## **SPECIAL SESSIONS CASE NO 05 OF 2016**

Present: Sri Utpal Prasad, AJS Sessions Judge Karimganj at Karimganj

02.03.2019

## ORDER

The accused Harilal Das has appeared with his learned counsel. Heard learned counsel for the accused as well as the learned Public Prosecutor on point of charge. Perused the materials collected during investigation and submitted before this Court on which the prosecution relies in support of its case.

Learned counsel for the accused has prayed for discharge of the accused stating that medico legal examination report of the victim shows that she was a major at the relevant time and the mother of the victim has stated in her statement under section 161 of the Code of Criminal Procedure, 1973 that the victim had boarded an Auto Rickshaw after coming from writing her examinations and that the accused was also in the said Auto Rickshaw. He has submitted that the victim's mother has not implicated the accused. He has also pointed out that the police did not record the statement of the victim. Per contra. learned public prosecutor has submitted that the evidence collected clearly shows that the victim had appeared in the HSLC examination and therefore, presumably, she was a minor at the relevant time.

As per guideline of the Hon'ble Supreme Court, determination of age of the victim in a POCSO offence has to be on the basis of the

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birth certificate, or the HSLC certificate, or the report of a medical

board in the same order of priority. In view of the above, at this stage, ignoring the statement of the victim that she was 16 at the time of the incident, giving credence to the medical report will not be proper.

Premised as above, the materials collected during evidence and placed before this Court, if hypothetically taken to be proved according to the rules of evidence, as they are, lead to the inference that the same will fetch conviction of the accused of having committed the offence under sections 366/376 of the Indian Penal Code, under section 9 of the Child Marriage Prohibition Act, 2006 and under section 4 of the Protection of Children from Sexual Offences Act, 2012.

The charges, accordingly, have been framed against the aforesaid accused Harilal Das under sections 366/376 of the Indian Penal Code, under section 9 of the Child Marriage Prohibition Act, 2006 and under section 4 of the Protection of Children from Sexual Offences Act, 2012. The charges have been read over and explained to him in Bengali language in presence of his learned Counsel to which he has pleaded not guilty and has claimed to stand trial.

As such, this court directs that the aforesaid accused be tried on the charges of having committed offence under sections 366/376 of the Indian Penal Code, under section

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9 of the Child Marriage Prohibition Act, 2006 and under section 4 of the Protection of Children from Sexual Offences Act, 2012.

Prosecution shall take steps for summoning the witnesses with endorsement of the corresponding issue numbers in the margin of the order sheet. On each of the dates, one witness shall be summoned.

The prosecution shall also take steps for calling for the HSLC certificate or the HSLC admit card of the victim for proving her age.

Learned counsel for the accused has admitted the medico legal report of the victim in view of section 294 of the Code of Criminal procedure, 1973 and, therefore, formal proof thereof, by recording evidence of the concerned doctor is dispensed with.

List the case on 10/06/2019, 11/06/2019, 14/06/2019, 15/06/2019, 17/06/2019 & 18/06/2019 for evidence of the prosecution.

Sessions Judge Karimganj at Karimganj