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

Sessions (Spl.) Case No.15/2016 U/S 354 IPC, R/W Section 8 of POCSO Act.

Present: Mr. Dhrupad Kashyap Das,

Sessions Judge, Morigaon.

State of Assam

Vs

Sri Karbor Bordoloi ....... Accused.

Date of Charge :- 15.05.2018.
Date of recording evidence :- 13.07.2018.

Date of Argument :- 17.07.2018.

Date of Judgment :- 18.07.2018.

### **Appearance for the Parties**

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. U. C. Roy, Ld. advocate.

Mr. N. K. Bora, Ld. Advocate.

## <u>JUDGMENT</u>

1. Prosecution case in brief is that on the eventful day i.e. on 11.08.2015 at around 4.00 P.M., the accused Karbor Bordoloi tried to rape the minor daughter of the informant, namely - Miss – X (real name is withheld to screen the victim from infamy) aged about 11 years by torn her wearing cloths taking the advantage of her loneliness. It is further alleged in the ejahar that while the victim made hue and cry, the elder sister of the victim came to the place of occurrence and tried to catch the accused, then, the accused pushed her back and fled away from the scene. Therefore, on the next day of the occurrence of incident, the informant went to Morigaon P.S. and filed an ejahar to that effect.

On receipt of the ejahar, the O/C Morigaon P.S. registered a case vide Morigaon P.S. Case No.229/2015, U/s 376/511 IPC against the above-named accused person.

Investigation was set in motion. During the course of investigation the I.O., visited the place of occurrence and drew up the sketch map of the place of occurrence. Thereafter, the I.O. examined the material witnesses. The I.O. took the victim girl to Morigaon Civil Hospital for medical examination. Thereafter, the I.O. brought the victim girl to the Court for recording her statement U/s 164 of Cr.P.C. During the course of investigation, the I.O. failed to arrest the accused person. The I.O. after collection of medical report of the victim girl and upon completion of investigation and finding sufficient incriminating materials against the accused person, submitted charge-sheet with allegation of offences punishable U/s 354 IPC, R/W Section 7 of POCSO Act against accused Karbor Bordoloi showing him as absconder. Thereafter, the accused surrendered before the Court, wherefrom, he was remanded to judicial custody. Thereafter, on production of the accused person, the copies of relevant documents as mandate U/s 207 Cr.P.C. was furnished to him. Subsequently, the accused was enlarged on Court bail. Thereafter, on appearance of the accused person and having heard Ld. Counsel of both sides and basing upon the materials on record framed charge U/s 354 of IPC, R/W Section 8 of POCSO Act against the accused person, which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

#### 2. Point for determination:

(i) Whether the accused person on the eventful day i.e. on 11.08.2015 at around 4.00 P.M. at the house of the informant at village Morakolong under Morigaon P.S. in the district of Morigaon assaulted or used criminal force to the minor daughter of the informant intending to outrage the modesty of the said minor daughter of the informant for committing some illegal act with her by such assault?

- (ii) Whether the accused person on the same day, time and place committed sexual assault as defined in Section 7 of the POCSO Act with the minor daughter of the informant, aged about 11 years?
- 3. In this case prosecution has examined only 2 (two) PWs, the most vital witness of this case i.e. the victim as PW-2 and the informant Junmoni Bordoloi as PW-1. But their evidence did not support the prosecution case from any angle. Therefore, the Ld. P.P. has prayed for closing down of further prosecution evidence and, accordingly prosecution evidence was closed. Thereafter, the accused was examined U/s 313 Cr.P.C. with respect to the incriminating circumstances that surfaced against him. 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 the prosecution has alleged that on the eventful day the above-named accused person tried to commit rape of the minor daughter of the informant, while she was alone in her house by torn her wearing cloths.
- (a) PW-1 (Ms. Junmoni Bordoloi) stated in her evidence that she lodged this case. PW-1 stated that victim Kakumoni Bordoloi is her daughter. PW-1 stated that she knew the accused person, who used to come to the house of her neighbour frequently. According to PW-1, the alleged incident took place about 2  $\frac{1}{2}$  to 3 years ago and at the relevant time of occurrence of the incident her daughter was 11 years old. PW-1 stated that on the date of occurrence of the incident, in the evening hour, she went out from her house keeping her daughter in her house with her daughter-in-law and after coming back to her house, she saw her daughter was crying on her bed and on being asked, her daughter told her that the accused came to their house and caught hold her,

therefore, out of fear, she cried out. PW-1 stated that her daughter did not say anything about committing any illegal act with her by the accused.

During cross-examination, PW-1 stated that her daughter used to treat the accused as uncle. PW-1 stated that the accused caught the hand of her daughter as uncle. PW-1 stated that when she informed the police about the incident, she was asked to submit an ejahar for the incident, but the ejahar was prepared by police. PW-1 stated that she did not know the contents of the ejahar. PW-1 stated that after few days of the institution of the case, she realized that the case was lodged against the accused out of misunderstanding.

(b) PW-2 (Ms. Kakumoni Bordoloi) stated that the informant Junmoni Bordoloi is her mother. PW-2 stated that she knew the accused person, whom she called as uncle. According to PW-2, the alleged incident took place about 2 1/2 to 3 years ago and at the relevant time of occurrence of the incident she was 11 years old. PW-2 stated that the accused came to their house sometimes. PW-2 stated that on the date of occurrence of the incident, in the evening hour, her mother went out from house for some work keeping her with her sister-in-law, then the accused came to their house and caught hold her hand, so, she shouted and cried out and, as such, her sister-in-law came towards her and, then the accused left their house. PW-2 stated that she told about the incident to her mother when her mother returned back, then on hearing about the incident, her mother went to police station and lodged the case against the accused. PW-2 stated that she made statement before Magistrate. PW-2 proved Ext.2 is her statement made before the Magistrate, whereupon Ext.2 (1) and Ext.2 (2) are her signatures.

During cross-examination, PW-2 stated that at the time of occurrence of the incident, she was eating guava along with her friends. PW-2 stated that the accused person did not commit any illegal act with her. PW-2 stated that the accused caught hold her hand as maternal uncle. PW-2 stated that she did not know what she stated in her statement before the Magistrate. PW-2 stated that her mother lodged the case out of misunderstanding.

Thus, we have found that none of these two vital prosecution witnesses including the victim did not utter a single word as regards outrage the modesty of the victim and sexual assaults being allegedly committed by the accused person.

- 6. 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 person did not commit any illegal act with her and her mother lodged the case out of misunderstanding". So, we have found that the most material witness of this case as 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."
- 7. 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 354 of IPC, R/W Section 8 of POCSO Act and as such, he is acquitted and set at liberty. In this case, since the victim girl has completely negated the prosecution case, therefore, she is not entitled to receive any compensation under section 357 A Cr.P.C.

Judgment is delivered and pronounced in the open Court on this  $18^{\text{th}}$  day of July, 2018 under my hand and seal.

Dictated & corrected by me

Sessions Judge, Morigaon.

# **APPENDIX**

## A. Prosecution witness:-

- 1. PW-1:- Ms. Junmoni Bordoloi,
- 2. PW-2:- Ms. Kakumoni Bordoloi,
- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit:-
- 1. Ext.1, the ejahar.
- 2. Ext.2, the statement of the victim recorded U/s 164 Cr. P.C.
- D. <u>Defence exhibits</u> :- Nil.

Sessions Judge, Morigaon.