IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sess. Spl. Case No.28/2015 U/S 457/376 (2) (i) of IPC, read with Section 4 of POCSO Act.

Present : Mr. M. Ahmed, Sessions Judge, Morigaon.

State of Assam

Vs

Sri Kusharam Medhi,

Appearance for the Parties

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

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

Date of recording evidence :-03.03.2016 and 04.05.2016.

Date of Argument :-04.05.2016.

Date of Judgment :-16.05.2016.

<u>J U D G M E N T</u>

Prosecution case in brief is that on 12.09.2015 at around 9.30 P.M. accused Khusharam Medhi tiptoed inside the dwelling house of the informant Dineswari Medhi of village Simaluguri, P.S. Mikirbheta, Dist. Morigaon taking advantage of non-presence of the family members by entering into the said house subjected the victim, 14 years old grand – daughter of the informant Dineswari Medhi @ Dimbeswari Medhi to forcible sexual intercourse.

On the following day of this incident, the informant went to Mikirbheta P.S. and she lodged an ejahar with the then O/C of Mikirbheta P.S. On receipt of the said ejahar, O/C Mikirbheta P.S. registered it as Mikirbheta P.S. Case No.334/15, U/s 457/376 (2) (i) of IPC, read with Section 4 of 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 to medically examined and got her statement recorded U/s 164 Cr.P.C., the statement of the informant was also recorded thereunder. The I.O. arrested the accused and produced before the learned Court below, wherefrom, he was remanded to judicial custody and after completion of investigation, the I.O. submitted charge-sheet with allegation of offences punishable U/s 457/376 (2) (i) of IPC, read with Section 4 of POCSO Act against the afore-named accused. At the time of submitting the charge-sheet, 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 framed charges U/s 457/376 (2) (i) of IPC, read with Section 4 of POCSO Act and read over and explained the particulars of charge to the accused to which he professed 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 12.09.2015 at around 9.30P.M. at village Simaluguri under Mikirbheta P.S. in the district of Morigaon, the accused committed lurking house-trespass by entering into the dwelling house of the informant and thereby he committed rape upon 14 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 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

4. In this case, it is alleged by the prosecution that on the eventful night the afore-named accused entered in to the house of the informant in absence of him and other family members committed rape upon the minor daughter of the informant and she was then aged about 14 years and also committed penetrative sexual assault on her.

To prove this fact, the prosecution initially examined PW-1, the informant; she in her evidence has stated that at the time when this incident occurred the age of the victim (her grand-daughter) was 16 to 17 years. The victim was physically handicap. At the relevant time of incident she was in the house of a village person and on returning back home, she came to know that somebody entered into her house and she found her grand-daughter crying inside the house. Then, she suspected that the accused might have done something wrong. She slapped the accused in anger suspecting him as a thief. At that time the accused was in a drunken condition. As because the accused entered in her house in her absence and he was having bad record, so she filed this case against the accused.

5. PW-2, the victim girl, she in her evidence has not uttered a single word as regard sexual assault being allegedly committed by the accused. She in her evidence has stated that she frequently got shocked at small incident and she got frightened because of darkness in the house. She in her evidence has further stated that the accused had not done anything wrong to her.

6. Thus, 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.

7. In view of the above discussion, I have found that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 457/376 (2) (i) of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment delivered in the open Court on this 16th day of May, 2016 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1: Sri Dineswari Medhi,
- 2. PW-2: Miss Nijara Medhi,
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit:
- D. Defence exhibits :- Nil.