### IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

# Spl. (P) Case No. 8 of 2016 U/S 4 of POCSO Act (Arising out of Moranhat P.S. Case No. 202/2015)

State of Assam

-Vs-

Sri Raghab Ch. Kalita ...... Accused

### APPEARANCE:

For the prosecution : Sri A. K. Bora, P.P.

For the accused : Mr. D.K. Gohain, Advocate

Date of framing charge : 18.01.2017
Dates of Evidence : 28.11.2017
Date of Argument : 28.11.2017
Date of Judgment : 28.11.2017

### JUDGMENT

- 1. Prosecution case, in brief, is that on 20.09.2015, one Sri Mena Rajowar lodged an FIR with O/C, Lahowal Police Station alleging, inter alia, that prior to one year of filing FIR on 20.09.2015, while his 15 years old daughter, i.e. victim 'G' (name withheld) was working in the house of Ex-Minister Paban Singh Ghatowar as domestic help, accused Raghab Kalita, who has also worked there as cook committed misdeed with victim 'G' by enticing her with a promise to marry her.
- 2. On this FIR, Lahowal P.S. Case No. 129/2015 u/s 493/376 IPC, R/W Section 8 of POCSO Act, 2012 was registered. Subsequently FIR was forwarded to O/C, Moranhat P.S. as the place of occurrence falls under Moranhat P.S. and accordingly Moranhat P.S. Case No. 202/2015 u/s 493/376 Spl. (P) Case No. 8 of 2016 Page 1 of 4

- IPC, R/W Section 8 of POCSO Act, 2012 was registered and started investigation. During investigation, accused was arrested and the victim was medically examined and recorded her statement in the court u/s 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused u/s 493/376 IPC, R/W Section 8 of POCSO Act, 2012 in the court of learned SDJM, Charaideo at Sonari. As the case is exclusively triable by the court of Special Judge, vide order dated 28.03.2016, learned SDJM, Charaideo Sonari sent the case record to this court for trial.
- 3. After furnishing copy to the accused person, vide order dated 18.01.2017, charge u/s 4 of POCSO Act, 2012 was framed against accused Raghab Chandra Kalita to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses including victim and informant.
- 4. Examination of accused u/s 313 Cr.P.C. is dispensed with as no incriminating material found against the accused for the alleged offence in the evidence of victim and informant. By using the power u/s 232 Cr.P.C case is disposed without calling the accused to adduce evidence.
- 5. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. D.K. Gohain, learned defence counsel and gone through the record. I have considered the submission of both the sides.

## POINT FOR DETERMINATION IS -

6. (i) Whether prior to one year of filing FIR, the victim was subjected to penetrative sexual assault by the accused?

### **DECISION AND REASONS THEREOF:**

7. PW 1 the victim, in her evidence deposed that in the year 2015, she worked at the residence of Sri P S Ghatowar as domestic help. Accused has also worked there as cook. During this period, she felt intimacy towards him. After few months, after returning home, on 20.09.2015, accused met her at Lahowal and on this their, villagers brought them to her residence at

Lahowal and thereafter handed over them to Lahowal police on suspicion. At the instigation of villagers, her father lodged an FIR at Lahowal. Subsequently, Lahowal police transferred the case and handed over them to Moranhat PS. Police interrogated her and took her to hospital. In her cross by defence, she admitted that during their stay at Moran, there was no physical relation with the accused. After the incident, she got married to another person and living conjugal life peacefully. She has no grievances against the accused. She has also no objection in acquittal of the accused from this case.

- 8. PW-2 Sri Mena Rajowar in his evidence deposed that accused Raghab Ch. Kalita is known to him since the date of filling FIR. Victim G' is his daughter. In the year 2015, his daughter worked at the residence of P S Ghatowar as domestic help. On 20.09.2015, accused met his daughter at Lahowal and on suspicion, their villagers brought them to his residence at Lahowal and thereafter handed over to Lahowal. At the instigation of villagers, he lodged the FIR at Lahowal PS. Subsequently, Lahowal police transferred the case and handed over his daughter and accused to Moranhat PS. In his cross-examination, PW 2 stated that after the incident, his daughter got married to P Rajowar and they are living the conjugal life peacefully. He has not heard about any ill treatment by the accused on his daughter during her stay at Moranhat. He has no grievances against the accused. He has no objection in acquittal of the accused from this case.
- 9. From the evidence of PW 1 and PW 2 it appears that the victim having intimacy with the accused while they met at Lahowal, the villagers handed over them to Lahowal police and later on at the instigation of villagers her father lodged the FIR. In her cross, the victim clearly stated that during their stay at Moran, there was no physical relation with the accused. From her cross examination it appears that after the incident she got married to another person and living conjugal life peacefully and now she is not willing to proceed further with this case and prayed for acquittal of the accused. PW 2 being the father of the victim deposed nothing implicating the accused with the alleged

offence. He further stated that he never heard about any ill treatment by the accused on the victim during her stay at Moranhat. In her examination-in-chief the victim nowhere stated that accused has committed sexual intercourse with her without her consent or with her consent. So from the evidence of PW 1 it is crystal clear that there is no evidence of penetrative sexual assault on the person of the victim.

- 10. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 4 of POCSO Act against the accused. As such, accused Raghab Chandra Kalita is acquitted from the charge u/s 4 of POCSO Act, 2012 and set at liberty forthwith.
- 11. The bail bonds executed by the accused and his surety stand extended for another six months from today u/s 437-A Cr.P.C.
- 12. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- 13. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 14. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the,  $28^{\text{th}}$  day of November 2017 at Sivasagar.

Special Judge <u>Sivasagar</u>