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

<u>Sessions (Spl.) Case No.10/2016</u> U/S 341/376/506 IPC, R/W Section 4 of POCSO Act.

[Committed by Ld. SDJM (S), Morigaon in G.R. Case No.2735/13]

Present: Mr. Dhrupad Kashyap Das,

Sessions Judge, Morigaon.

#### State of Assam

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Md. Mainul Hoque ...... Accused.

Date of Charge :- 13.05.2016.

Date of recording evidence :- 18.04.2017 & 18.04.2018.

Date of Argument :- 18.04.2018.

Date of Judgment :- 19.04.2018.

## **Appearance for the Parties**

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

Advocate for the accused :- Mr. A. Ahmed, Ld. Advocate.

Mr. D. Ahmed, Ld. Advocate.

## **JUDGMENT**

1. Prosecution case in brief is that on the eventful night i.e. on 19.12.2013 at night, there was a religious function organized at Borkurani Maszid. The victim girl i.e. the minor daughter of the informant of village Khatarbori under Mayong P.S. went to attend the said function. After attending the said meeting, while the minor daughter of the informant along with her friend were returning back to their house, the accused Md. Mainul Haque along with another wrongfully restrained them and under threat took them to nearby paddy field and subjected them to sexual assault by tying their mouth and eyes. It is further alleged in the complaint that the accused person also threatened them to kill, if they disclosed about the incident to someone else. Therefore, the informant filed a complaint petition before the learned Chief

Judicial Magistrate, Morigaon, which was forwarded to O/C Mayong P.S. to register and investigate the case. Accordingly, the O/C Mayong P.S. after receipt of the complaint petition, registered a case vide Mayong P.S. Case No.117/13, U/s 341/376/506/34 IPC, R/W Section 4 of POCSO Act 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 examined the witnesses. Thereafter, the I.O. brought the victim girl to the Court for recording her statement U/s 164 of Cr.P.C. The I.O. took the victim girl to Morigaon Civil Hospital for medical examination. During the course of investigation, the I.O. failed to arrest the accused person. So, after collection of medical report of the victim girl and upon completion of investigation and finding sufficient incriminating materials, the I.O. submitted charge-sheet with allegation of offences punishable U/s 341/376/506 IPC, R/W Section 4 of POCSO Act against accused Md. Mainul Hoque, showing him as absconder. Thereafter, the accused Md. Mainul Hoque surrendered before the learned trial Court, wherefrom he was remanded to judicial custody. On production of the accused person before the Ld. trial Court, the copies of relevant documents as mandate U/s 207 Cr.P.C. was furnished to him. Thereafter, the Ld. Court below committed the case to this Court finding it to be exclusively triable by this Court. On receipt of the case record and on production of the accused person and after having heard Ld. Counsel of both sides and basing upon materials on record my learned Predecessor framed charge U/s 341/376/506 of IPC, R/W Section 4 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. Subsequently, the accused person was enlarged on Court bail.

## 2. Point for determination:

(i) Whether the accused person on the eventful day i.e. on 19.12.2013 at around 7.00 P.M. at village Borkurani under Mayong P.S. in the district of Morigaon wrongfully restrained the minor daughter of the informant ?

- (ii) Whether the accused person on the same day, time and place committed rape on the minor daughter of the informant?
- (iii) Whether the accused person on the same day, time and place committed criminal intimidation by threatening the minor daughter of the informant with injury to her person and property with intent to cause alarm to the victim girl or to cause her to do an act which she is legally bound to do?
- (iv) Whether the accused person on the same day, time and place committed penetrative sexual assault upon the minor daughter of the informant?
- 3. In this case prosecution has examined only 4 (four) PWs including the most vital witness of this case i.e. the victim as PW-4 and the informant Md. Abdul Rafique as PW-3. 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. In the event of examination of the accused as warranted U/s 313 Cr.P.C. found to be redundant; the same 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 the prosecution has alleged that on the eventful night the above-named accused person wrongfully restrained the victim girl on a village road, while she was returning from a religious meeting and took her to a paddy field and subjected her to sexual assault.
- (a) PW-1 (Musstt. Rusema Khatun) stated in her evidence that she knows the informant and the victim girl. According to her, the alleged incident took place about one year ago. PW-1 further stated that on the date of the occurrence of the incident, the daughter of the informant and her sister went to

attend a religious meeting at night and they also came back to their house on the same night. She does not know anything about the incident.

(b) PW-2 (Md. Abdul Kuddus) stated in his evidence that he knows the informant and the victim girl. The accused person is also known to him. PW-2 stated that he does not know as to why the informant lodged the case against the accused person. PW-2 further stated that victim Marjina is his daughter and she was called to attend a village meeting, where she stated that the accused person did not commit any illegal act with her.

During cross-examination, PW-2 stated that Abdul Hakim was also present in the village meeting. PW-2 further stated that subsequently, village people arranged the marriage of the daughter of the informant with the accused person and she accordingly got married with the accused person. However, after about one month, she (the daughter of the informant) eloped with another person.

(c) PW-3 (Abdul Rafique), the informant stated in his evidence that victim girl is his daughter. According to him, the alleged incident took place about 4/5 years ago. PW-3 stated that about five years ago, one day, his daughter went to attend a religious meeting, which was held at night. The accused person was also present in that meeting, who offered his daughter betel-nut and chocolate. Later on, when his daughter came back to his house, she told him that the accused person offered her betel-nut and chocolate. Therefore, he lodged the instant case against the accused person. PW-3 further stated that he lodged the complaint before the Court and he put thumb impression in the complaint petition. He does not know the contents of the complaint petition, which was written by somebody else.

During cross-examination, PW-3 stated that he lodged the case against the accused person since he offered his daughter chocolate and betel-nut in the meeting. PW-3 stated that the accused person did not commit any illegal act with his daughter. At present, his daughter got married with somebody else. He does not know what was written in the complaint petition. PW-3 stated that the accused person never outrage the modesty of his daughter. He lodged the case out of misunderstanding.

(d) PW-4 (the victim girl) stated in her evidence that the complaint was lodged by her father. She knows the accused person, who is their locality. According to PW-4 the occurrence of the incident took place about 4/5 years ago, when she was around 14/15 years old. PW-4 stated that on the eventful day, she went to attend a religious meeting at their village and in that meeting the accused person was also present since he is their locality and he offered her betel-nut and chocolate. However, she refused to take the chocolate and the betel-nut. PW-4 stated that when she informed the matter to her father, then her father after knowing about the fact got anguish and lodged the ejahar. PW-4 stated that he knows the accused person prior to this incident. Police examined her and recorded her statement.

During cross-examination, PW-4 stated that the accused person did not utter any obscene word. He only offered chocolate and betel-nut to her. Her father lodged the case out of misunderstanding. According to PW-4, the accused person is innocent.

Thus, we have found that none of these four prosecution witnesses including the victim did not utter a single word as regards rape, wrongful restrain and penetrative 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 utter any obscene word. He only offered chocolate and betel nut to her. Her father lodged the case out of misunderstanding and the accused person is innocent." So, we have found that the most material witness of this case as PW-4 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 341/376/506 of IPC, R/W Section 4 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  $19^{\text{th}}$  day of April, 2018 under my hand and seal.

Dictated & corrected by me

Sessions Judge, Morigaon.

### **APPENDIX**

### A. Prosecution witness:-

- 1. PW-1: Musstt. Rusema Khatun,
- 2. PW-2: Md. Abdul Kuddus,
- 3. PW-3: Md. Abdul Rafique,
- 4. PW-4: Miss Purnima Khatoon,
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit :- Nil.
- D. <u>Defence exhibits</u> :- Nil.

Sessions Judge, Morigaon.