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

Sessions (Spl.) Case No.23/2016 U/S 448 IPC, R/W Section 4 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Sri Uttam Ch. Boro ..... Accused

Date of Charge

:- 01.09.2016. Date of recording evidence :- 27.02.2017.

Date of Argument

:- 27.02.2017.

Date of Judgment

:- 28.02.2017.

### **Appearance for the Parties**

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

Advocate for the accused: - Mr. P. R. Bora, Ld. Advocate,

### **JUDGMENT**

1. In this case, the prosecution has alleged that a 15 (fifteen) years old girl fell a victim to sexual assault at the hand of accused. The accused is one Sri Uttam Ch. Boro, son of Late Poheswar Boro of village Amguri, P.S. Laharighat, Dist. Morigaon (Assam). The informant is one Phanidhar Konwar of village Kushtoli, P.S. Laharighat, Dist. Morigaon, who is the father of the victim, Miss X (the real name of the victim kept concealed to save her from infamy). According to the prosecution, the above-named accused committed criminal house trespass by entering into the house of the informant in absence of inmates of that house and subjected the victim to penetrative sexual assault. After two

days of that occurrence of the incident i.e. on 16.02.2016, the informant went to Laharighat P. S. and lodged an ejahar to that effect. Accordingly, the O/C Laharighat P.S. after receipt of the said ejahar registered a case vide Laharighat P.S. Case No.62/2016, U/s 3 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, drew up sketch map of the place of occurrence and also got the victim medically examined and got her statement recorded U/s 164 Cr.P.C. During investigation, the I.O. arrested the accused person. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused with allegation of offences punishable U/s 448 of IPC, read with Section 3 of POCSO Act. At the time of submitting the charge-sheet, the accused was in jail custody. 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 my learned predecessor framed charges U/s 448 of IPC, read with Section 4 of POCSO Act, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

#### 2. Point for determination:

- (i) Whether the above named accused on 14.02.2016 at about 2.30/3.00 P.M. at village Kustoli under Laharighat P.S. in the district of Morigaon committed house trespass by entering into the dwelling house of the informant Phanidhar Konwar, which was used as a human dwelling?
- (ii) Whether the above named accused on the same day, time and place committed penetrative sexual assault on the victim, who is under 18 (eighteen) years of age?

- 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 did 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 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, it is alleged by the prosecution that on the eventful day the above-named accused unlawfully entered into the house of the victim and molested her sexually against her will with force.

To prove this fact, the prosecution initially examined PW-1, the informant. He in his evidence has stated that the victim Miss- X is his daughter and the accused is also known to him. At the time of occurrence of the incident his daughter was 16/17 years of age. PW-1 has further stated that the accused person is his neighbour and he used to visit his house frequently. On the eventful day, the accused person came to his house and showed anger to his daughter, for which his daughter got frightened and shouted. PW-1 has further stated that while he came back home in the evening hour, he came to know about the incident and he became anguish on the conduct of the accused person, so, he lodged the ejahar. PW-1 proved Ext.1 the ejahar, whereupon Ext.1 (1) is his signature. In his cross-examination, PW-1 has stated that he does not know about the contents of the ejahar. The ejahar was written by somebody else. Since he was an illiterate person, he only knows to put his signature, so, he just put his

signature in the ejahar. PW-1 has further stated that he lodged the case out of misunderstanding and no such incident took place as explained in the ejahar.

6. PW-2 (Miss. X), the victim girl, she in her evidence has stated that the complainant is her father. She knows the accused person, who resides in their locality. According to PW-2 at the time institution of the case, she was staying in her father's house and at that time, she was unmarried. PW-2 has further stated that the accused person used to come to their house frequently and on the eventful day, the accused person came to their house and showed fear to her, so, she frightened and shouted. On hearing her shout, the accused left their house. She told about the incident to her father, who later on lodged this case. PW-2 has further stated that she was produced before the Magistrate after the incident, but she does not know for what purpose, she was produced. However, the Magistrate recorded something, which she does not know. She only put her thumb impression in her statement recorded by the Magistrate. PW-2 has further stated that later on she came to know that the case was lodged out of misunderstanding. In her cross-examination, PW-2 has stated that the accused person did not commit any illegal act with her on the eventful day. The accused person used to do mockery with her frequently, but on the eventful day, she got frightened and shouted. PW-2 has further stated that she does not know the contents of her statement made before the Magistrate. She gave statement before the Magistrate as per instruction of her family members.

Thus, we have found that none of these two vital PWs (i.e. complainant and victim) have uttered any single word as regards house trespass and also subjected the victim in penetrative sexual assault being allegedly committed by the accused.

7. 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. 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."

8. 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 448 of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty. In this case, victim is not found to be entitled to receive any compensation as defined under victim compensation scheme since the victim has completely negated the prosecution case.

Judgment is delivered and pronounced in the open Court on this 28<sup>th</sup> day of February, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

### **APPENDIX**

### A. Prosecution witness

1. PW-1: - Sri Phanidhar Konwar,

2. PW-2: - Smti. Lalita Konwar,

B. <u>Defence witness: Nil.</u>

# C. Prosecution Exhibit:

- 1. Ext.1 :- the ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.