IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sess. Spl. Case No.23/2015 U/S 447/376 of IPC, read with Section 4 of POCSO Act.

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

State of Assam

Vs

Md. Sulman Ali.

Appearance for the Parties

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

Date of recording evidence :- 08.01.2016

Date of Argument :- 08.01.2016.

Date of Judgment :- 25.01.2016.

JUDGMENT

1. Prosecution case may be re-counted in a nutshell as under :-

Informant is one Md. Rofiqul Islam, son of Md. Abdur Rahman of village Nagabandha under Laharighat P.S. in the district of Morigaon and the victim Miss- X (real name is withheld to screen the victim from infamy and ignominy) was his daughter. The victim was then 10 (ten) years of age. On the eventful day i.e. on 04.05.2015 at around 8.00 P.M. the victim went to a tube-well situated at the campus of her house to clean herself, then the aforenamed accused came from behind, gagged her mouth, took her to nearby prayer hall and subjected her to forcible sexual intercourse. The matter was agitated before the elderly person of the village, but the informant got no fruitful result, so, he after few days, lodged an F.I.R. before the then I/C

Borsala Police outpost and on receipt of the same, the I/C of Borsala Outpost forwarded the same to the then O/C of Laharighat P.S. to register a case under proper sections of law. Accordingly, the O/C Laharighat P.S. registered a case vide Laharighat P.S. Case No.228/15, U/s 447/376 (2) (i) of IPC, read with Section 4 of the POCSO Act against the accused Md. Sulman Ali of village Nagabandha. .

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, examined the material witnesses and also examined the victim girl and arrested the accused. Subjected the victim to medical examination and also subjected her to be examined by the Court and upon collecting the birth certificate and medical documents and having completed the investigation, the I.O. submitted charge-sheet against the afore-named accused with allegation of offences punishable U/s 447/376 (2) (i) of IPC, read with Section 4 of POCSO Act. Initially, the accused produced before this Court, thereafter, after submission of charge-sheet, this Court furnished the copies of relevant documents to the accused, who was in jail custody. Subsequently, the accused was granted Court bail. Thereafter, having heard Ld. Counsel of both sides and basing upon the materials on record, framed charge U/s 447/376 of IPC, read with Section 4 of POCSO Act and read over and explained the particulars of charge to the accused to which he absurd guilty and claimed to be tried.

2. Point for determination:

- (i) In the instant case, it is to be determined that if the present accused on the eventful day i.e. on 04.05.2015 at around 8.00 P.M. at village Nagabandha under Laharighat P.S. in the district of Morigaon, committed criminal trespass having lawfully entered into the residential campus of the informant with intent to assault or annoy the daughter of the informant and thereby at the same time committed rape upon the victim a girl about 10 years of age.
- 3. In this case prosecution has examined as many as 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 that event examination of the accused U/s 313 Cr.P.C. was found to be redundant and 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 day, while the victim girl went to by the side of a tube-well located in the campus of her house, the afore-named accused came from behind, gagged her mouth and took her to a nearby prayer hall and committed rape upon her.

In this case, the victim girl as PW-2 does not support the prosecution allegation. According to her, she was a student of Class-VI at the relevant time and had love affairs with the afore-named accused, so, she wanted to get married with the accused and on the eventful day, she went to the prayer house to meet the accused and her father got wind of the matter, so, he went there to bring her back. Subsequently, her father brought this case against the accused. She has further stated that the accused did nothing wrong with her.

Evidence of PW-1, the father of the victim and the informant of this case goes with the same line of the evidence of PW-2. In his evidence PW-1 has stated that his daughter then aged about 10 years. She was a school going girl. All of a sudden, his daughter was found missing from his house, so, he searched for her here and there and finally, he detected her near one prayer house and on reaching there, he found his daughter conversing with the accused and then he brought back his daughter to his house. He felt offending as because the accused talked with his daughter at that place. So, he filed this case.

I have subjected the evidence of both the materials witnesses to critical analysis and it is found that none of them supported the prosecution case on material aspects. The prosecution alleged that the accused forcibly took the victim to the prayer house and committed rape on her. But PW-2,

the victim refused that allegation. According to her, she had love affairs with the accused and on the eventful day she voluntarily went to the prayer house to meet the accused and her father got wind about it and he went there to being her back. Further, the accused did nothing wrong with her.

5. Thus, we have found that the material part of the prosecution case remained un-substantiate, 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.

6. In view of the above discussion, I have found that the prosecution has miserably failed to establish the guilt of the accused for the offences punishable U/s 447/376 IPC, read with Section 4 of POCSO Act beyond all reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 447/376 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 25th day of January, 2016 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1 :- Md. Rafiqul Islam,
- 2. PW-2 :- Miss Rasida Khatun,
- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit : Nil.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.