## IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.11/2016 U/S 341 IPC, R/W Section 8 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Mubarak Ali ..... Accused

Date of Charge

:- 20.07.2016.

Date of recording evidence :- 24.01.2017.

Date of Argument

:- 24.01.2017.

Date of Judgment

:- 25.01.2017.

## **Appearance for the Parties**

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

Advocate for the accused:- Mr. B. H. Talukdar, Ld. Advocate,

### <u>JUDGMENT</u>

1. In this case, the prosecution has alleged that a 14 (fourteen) years old girl fell a victim to sexual assault at the hand of accused. The accused is one Md. Mobarak Ali, son of Late Hussain Ali of village No.1 Naramari, P.S. Dharamtul, Dist. Morigaon (Assam). The informant Md. Mofij Ali is also a resident of this village. He 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, on 01.10.2015 at around 5.30/6.00 P.M., while the victim girl along with her friend after visiting house of their relative were returning back home by a village road, then the above - named accused accosted them on the village road and gave some hints of sexual acts. The victim and her friend

ignored such hints and they continued going towards their house. Then, the above-named accused caught hold of the hand of the victim, dragged her by the road side, posted kisses on her face and touched her private parts. Thereafter, the victim and her friend raised hulla, then the accused fled away from the spot. After two days of the occurrence of incident, the informant went to Dharamtul P.S. and he lodged an F.I.R. On the basis of which, the O/C Dharamtul P.S. registered a case vide Dharamtul P.S. Case No.103/15, U/s 341 IPC, read with Section 8 of the 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 medically examined and got her statement recorded U/s 164 Cr.P.C. The I.O. during the course of investigation failed to arrest the accused. 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 341 of IPC, read with Section 8 of POCSO Act showing the accused as absconder. After submitting charge-sheet, the accused was surrendered before the learned Court and 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 341 of IPC, read with Section 8 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 the eventful day i.e. on 01.10.2015 at about 6.00 P.M. at village No.1 Naramari under Dharamtul P.S. in the district of Morigaon, wrongfully restrained the victim on the village road?

- (ii) Whether on the same day, time & place committed sexual assault on the victim i.e. Miss – X, a minor girl, aged about 14 years by forcibly committing sexual intercourse with her?
- 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 has 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 wrongfully restrained the victim and took her to the side of a village road and committed sexual assault upon her.

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 his nephew. According to him, the occurrence took place about one year ago and on the eventful day, his daughter i.e. the victim was coming back to her house from the house of her maternal uncle and on the way, the victim met the accused, then, the accused scolded her for loitering in the evening, so, a quarrel took place between them. Thereafter, his daughter i.e. the victim came back to the house and reported the matter to her mother. PW-1 has further stated that finally he got to know about the incident and also heard that his daughter, the victim cried, when the accused restrained her on the way to home. Therefore, he lodged the case against the accused. He proved Ext.1 the ejahar and Ext.1

- (1) is his signature thereon. In his cross examination, he has stated that there was previous dispute between them i.e. the informant and the accused. PW-1 has further stated that the accused did not commit any illegal act with his daughter (the victim) and he does not know the contents of the ejahar, as the ejahar was written by someone else, he only put his signature thereon. PW-1 has further stated in his cross-examination that he lodged the case out of misunderstanding and according to him, the accused is innocent and he did nothing wrong to her daughter.
- 6. PW-2, the victim girl, she in her evidence has stated that the informant is her father and the accused is her cousin. On the particular day, in the evening hour, she was coming towards her house from the house of her maternal uncle and on the way, she met the accused. According to her, while the accused had seen her loitering on the road in the evening hour, he rebuked her and then a quarrel took place between them. Thereafter, on reaching her house, she reported the incident to her mother and then her mother entered into a quarrel with the accused. Thereafter, her father lodged a case against the accused. In her cross-examination, she has stated that the accused did not commit any illegal act with her, he simply scolded her, as she was loitering on the road in the evening hour. Her father lodged the case against the accused out of anguish and misunderstanding. According to PW-2 i.e. the victim, the accused is innocent and he did nothing any illegal act as alleged in the F.I.R. upon her.

Thus, we have found that none of these two vital PWs (i.e. complainant and victim) uttered a single word as regards sexual assault being allegedly committed by the accused and also the allegations as alleged in the F.I.R.

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 341 of IPC, read with Section 8 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this 25<sup>th</sup> day of January, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

## **APPENDIX**

# A. Prosecution witness

1. PW-1:- Md. Mafiz Ali,

2. PW-2: - Miss Salma Sultana,

B. Defence witness: Nil.

C. Prosecution Exhibit:

1. Ext.1: the ejahar.

D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.