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

<u>Spl. (POCSO) Case No.16/2017</u> U/S 366 A/376 (2)IPC, R/W Section 4 of POCSO Act

Present : Mr. Dhrupad Kashyap Das Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Hedayat Ullah

..... Accused Person

Date of Charge :- 21.08.2017.
Date of recording evidence :- 10.11.2017.

Date of Argument :-10.11.2017.

Date of Judgment :-13.11.2017.

#### **Appearance for the Parties**

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

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

### <u>JUDGMENT</u>

1. The prosecution case in brief is that on 05.01.2015, at about 9.00 PM, the accused namely, Md. Hedayat Ullah, (S/o Md. Samsul Hoque of village Buwalguri, under Lahorighat PS in the district of Morigaon), hadeloped the minor niece of the informantby way of inducement nearby Kalikajari Masjid and took her inside a dry pond and committed rape upon her. Thereafter, the accused fled away by leaving her inside the pond. Hence the case.

On 08.01.2015, the informant went to the Mikirbheta PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Mikirbheta PS registered a case vide Mikirbheta PS Case No.06/2015, U/s 366 A of IPC r/w Section 4 of the POCSO Act.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence and drew sketch map of the place of occurrence. The I.O. examined the material witnesses and got the victim medically examined and also I.O. brought the victim to the learned Court below for recording her statement U/s 164 Cr.P.C before the Magistrate. 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 offence punishable U/s 366 A/376 IPC r/w Section 4 of the POCSO Act, showing the accused person as absconder. Accordingly, the accused person was surrendered before this Sessions Courtand he was let off on court bail. Thereafter, this Court finding it to be exclusively triable by this court furnished copies of relevant documents as mandate U/s 207 of Cr.PC. to the accused person. Having heard Ld. Counsel of both sides and basing upon the materials on record, framed charges U/s 366 A/376 (2) IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused person to which he pleaded innocence and claimed to be tried.

# 2. <u>Point for determination</u>:

- (i) Whether the accused personon the eventful day i.e. on 05.01.2015 at about 9.00 PM at village Madhyam Kalikajari under Mikirbheta PS, induced the minor niece of the informant ogo from her house with him with intent that the said minor girl may be or shall be forced or seduced to illicit intercourse with him?
- (ii) Whether the accused person on the same day, time and place committed rape with the said minor niece of the informant?

- (iii) Whether the accused person on the same day, time and place, committed an offence of penetrative sexual assault as defined U/s 3/4 of the POCSO Act with the niece of the informant?
- 3. In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the informant, who is theuncle of the victim as PW-1 and the victim girl 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 the 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.

### 5. <u>DISCUSSION, DECISION AND REASONS THEREOF</u>

In this case, it is alleged by the prosecution that on the eventful day the above-named accused personcommitted rape upon the minor niece of the informant.

(a) To prove this fact, the prosecution has examined PW-1,Md. Usman Ali, he in hisevidence stated that he lodged the case. The victim girl is his niece. He knows the accused person. At the relevant time of the incident, his niece was 18 years old. The victim girl and the accused had love affair. But, the family members were not agreeing to that relationship. Being aggrieved, the family members told him to lodge the case against the accused person.

In his cross-examination, PW-1 stated that the case was lodged out of misunderstanding. He does not know the contents of the ejahar. He has no objection if, the accused person is released.

**(b)** PW-2,Victim X, in her evidence stated that,her uncle lodged this case. She knows the accused person. She had love affair with the accused person. But, her family members did not agree to their relationship and one day a dispute had arisen between both the family members. Later on, her marriage was solemnized by her family members.

During cross-examination, she stated that the case was lodged out of misunderstanding. She does not know the contents of the ejahar and she has no objection, if the accused is released.

- 3. Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. the informant and the victim respectively) examined by the prosecution have not stated anything as regards to kidnapping, committing rape and penetrative sexual assault being allegedly committed by the accused.
- 4. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the informant, who is the uncle of the victim and the victim have clearly statedthat there was love affair between the accused and victim and her family members were not agreed to their relationship therefore, the case was lodged against the accused. But both the PWs during their cross-examination have stated that the case was lodged out of misunderstanding and they have no objection if, the accused person is released. So, we have found that the most material witnesses 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."

5. 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 personis not found guilty for the offences punishable U/s 366 A/376 (2)of IPC, r/w Section 4 of POCSO Act and as such, he is acquitted and set him at liberty. His bail bond shall remain extended till next six months.

Judgment is delivered and pronounced in the open Court on this 13<sup>th</sup> day of November, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

# **APPENDIX**

## **A. Prosecution witness**

1. PW-1:- Md.Usman Ali

2. PW-2 :- Miss. Mamoni Khatun.

B. <u>Defencewitness: Nil.</u>

**C. Prosecution Exhibit :** 

**D. Defenceexhibits :- Nil.** 

Special Judge, Morigaon.