IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.28/2016 U/S 376 (D)/34 IPC, R/W Section 4 of POCSO Act

Present : Mr. D. K. Das Sessions Judge, Morigaon.

State of Assam

Vs.

1) Md. Sahidul Islam

2) Md. Wakidur Rahman @ Kudu

..... Accused Persons

Date of Charge :- 18.07.2017.
Date of recording evidence :- 27.07.2017.

Date of Argument :- 27.07.2017.

Date of Judgment :- 28.07.2017.

Appearance for the Parties

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

Advocate for the accused: Mr. P.R. Borah, Ld. Advocate,.

Mr. A. Zaman, Ld. Advocate.

JUDGMENT

The prosecution case in brief is that on 08.06.2016, at around 4.30 PM, when the informant-cum-victim went to the compound of the Moirabari Hospital, the accused persons, namely Md. Sahidul Islam, S/o Jainal Abedin and Md. Wakibur Rahman @ Kudu S/o Md. Samsul Hoque, both are from village Moirabari Ward No. 5 & Ward No.6 respectively under Moirabari P.S. under Morigaon District, by gagging her mouth took her behind the quarter of the said hospital and committed rape upon her.

On the same day of the incident, the informant-cum-victim went to the Moirabari PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Moirabari

PS registered a case vide Moirabari PS Case No.200/2016, U/s 376 (g) of IPC r/w Section 4 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 accused was produced before the Court, wherefrom, he remanded to judicial custody. Thereafter, the I.O. having completed the investigation and having found sufficient materials against the accused persons submitted charge-sheet against the above-named accused persons for the offences punishable U/s 376 (g) of IPC r/w Section 4 of the POCSO Act. At the time of submitting the charge-sheet the accused persons were languishing in jail and they were subsequently granted Court bail. Thereafter, the learned Court below having furnished copies of relevant documents as mandate U/s 207 of Cr.P.C. to the accused persons and committed the case to this Court having found it to be exclusively triable by this Court.

On receipt of the case record, having heard Ld. Counsel of both sides and basing upon materials on record, this Sessions court framed charge U/s 376 (D)/34 IPC r/w Section 4 of the POCSO Act against the accused persons, which was read over and explained to the accused persons to which they pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused persons on the eventful day i.e. on 08.06.2016 at around 4.30 PM at the compound of Moirabari Hospital under Moirabari P.S. in the district of Morigaon, committed rape upon the informant cum victim X aged about 13 years?
- (ii) Whether the accused persons on the same day, time and place committed penetrative sexual assault upon the victim, a minor girl?
- **3.** In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the informant cum Victim as PW-1 and the mother of 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

In this case, it is alleged by the prosecution that on the eventful day the above-named accused persons committed rape upon the victim girl aged about 13 years forcefully behind the quarter of the Moirabari Hospital.

To prove this fact, the prosecution has examined PW-1, the victim girl, who in her evidence has clearly negated the prosecution case as alleged. She told that on the date of the occurrence of the incident, she along with others went to the compound of the Moirabari Hospital to pick mangoes and while picking so the accused persons scolded her for making disturbances in the campus as it was a hospital compound and thereafter, the victim girl quarreled with the accused person, for which, the accused persons slapped her. The victim girl out of fear rushed to her house and informed her family members about the incident and they decided to lodge a case against the accused persons and accordingly, she lodged a case with the help of Mohori where she put her signature in the ejahar. Ext.1 is the said ejahar and Ext.1 (1) is her signature. She further told that she do not know the contents of the ejahar.

In her cross-examination, she told that their neighbors instigated her to lodge a case against the accused persons. She also stated that the case was lodged out of misunderstanding and the accused persons did not commit any immoral act with her daughter and she has no objection, if, the accused persons are released.

PW-2, the mother of the victim, she in her evidence has stated that the victim Miss- X is her daughter and the accused persons are known to her. She told that on the date of the occurrence of the incident her daughter Miss X aged about 13 years went to the compound of the Moirabari Hospital to pick mangoes and while picking mangoes the accused persons scolded her daughter for making disturbances in the campus. Thereafter, the victim started crying and rushed to her mother, for which, they lodged a case against the accused persons.

In her cross-examination, she told that their neighbors instigated her to lodge a case against the accused persons. She also stated that the case was lodged out of misunderstanding and the accused persons did not commit any immoral act with her daughter.

Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. complainant cum victim and the mother of the victim) examined by the prosecution have not stated anything as regards to rape and penetrative sexual assault being allegedly committed by the accused.

- 6. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim and her mother herself stated that the accused did nothing wrong to her and the case was lodged out of misunderstanding against the accused persons and, therefore, the accused persons may be released. 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."
- 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 persons are not found guilty for the offences punishable U/s 376 (D)/34 of IPC, r/w Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this 28^{th} day of July, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1 :- Miss X
- 2. PW-2 :- Musstt. Sahida Khatun
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit:
- 1. Ext.1:- the ejahar.
- D. Defence exhibits :- Nil.

Special Judge, Morigaon.

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ORDER

28.07.2017.

Accused persons Md. Sahidul Islam and Md. Wakibur Hussain @ Kudu are present.

Judgment is ready and pronounced in the open Court.

Considering the evidence on record, it is 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 offence punishable U/s 376 (D)/34 of IPC r/w Section 4 of the POCSO Act and as such, he is acquitted and set at liberty.

Judgment is enclosed in separate sheet.

Special Judge, Morigaon.