# IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury, Special Judge, Lakhimpur, North Lakhimpur.

#### SPECIAL CASE NO.18/2016.

Under Sections - 342/376/506 IPC and Under Sec.6 of the POCSO Act.

#### **PARTIES**

State of Assam. ... Complainant.

-versus
Md. Abidur Rahman @ Dilku. ... Accused.

#### **ADVOCATES APPEARED IN THE CASE**

Mr. Madhab Gogoi, Special Public Prosecutor. ...... For the State of Assam. Mr. Sanjib Gogoi, Advocate. ...... For the Accused.

Date of charge :03.10.2016.

Dates of taking evidence :08.11.2016, 06.03.2017, 29.08.2017 and

09.05.2018.

Date of hearing argument : 22.06.2018. Date of delivery of Judgment : 22.06.2018.

### **JUDGMENT**

The case of the prosecution may in brief describe thus:

The victim X is a minor girl and at the time of occurrence, she was reading in class-IV at Moidomia Muktab Primary School. On 05.10.2014, a boy named Babu took the victim X into the house of the accused, Md. Abidur

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Rahman @ Dilku and then, the accused, Abidur Rahman committed rape on the victim X, and after committing rape, the accused, Abidur Rahman sent the victim X to her house.

- 2. To this effect, on 11.10.2014, Musstt. Halima Begum, the mother of the victim X lodged an ejahar with the North Lakhimpur Police Station. On receiving the ejahar, the Officer-in-charge of North Lakhimpur PS registered the case vide North Lakhimpur PS Case No.1082/2014 under Sections 342/376/506/109/34 IPC RW Sec.6 of the POCSO Act, and the police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence, recorded the statements of the witnesses u/s 161 CrPC and prepared the sketch map of the place of occurrence. The I.O. got the victim X medically examined by the doctor. The I.O. also got recorded the statement of the victim X u/s 164 CrPC. The I.O. arrested the accused, Abidur Rahman @ Dilku and forwarded him before the court. The I.O also arrested the accused, Md. Babu Ali, who was a juvenile and referred his case at the Principal Magistrate, Juvenile Justice Board, North Lakhimpur, and after completion of investigation of the case on finding sufficient materials against the accused, Md. Abidur Rahman @ Dilku and the juvenile in conflict with Law, Md. Babu Ali under Sections 376/342/506/ 109/ 34 IPC and under Sec.6 of the POCSO Act, the I.O. of the case submitted the charge-sheet against them under the aforesaid Sections of IPC and the POCSO Act.
- 3. On receiving the charge-sheet and after procuring attendance of the accused, Md. Abidur Rahman @ Dilku, the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, forwarded the case to this court as the charge-sheet is submitted by the I.O. against the accused, Md. Abidur Rahman @ Dilku and juvenile, Md. Babu Ali under Sections 376/342/506/109/34 IPC and under Sec.6 of the POCSO Act.
- 4. The accused, Md. Abidur Rahman @ Dilku made his appearance before the court and necessary copies were furnished to him, and Contd...

after hearing the learned advocates of both sides and perusing the case record, sufficient materials under Sections 342/376/506 IPC and under Sec.6 of the POCSO Act had been found against the accused, Md. Abidur Rahman @ Dilku in the case record, and accordingly, charges under Sections 342/376/506 IPC and under Sec.6 of the POCSO Act were framed against the accused person by my learned predecessor. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 5 (five) witnesses.
- 6. The statement of the accused person has been recorded u/s 313 CrPC. The accused person in his aforesaid statement denied the commission of any offence.
  - 7. The accused person led no evidence in his defence.
- 8. Heard the Argument from the learned advocates of both sides.
  - 9. The points for determination in this case are :
- (I) Whether the accused person, Md. Abidur Rahman @ Dilku on 11.10.2014 wrongfully confined the victim X in his house situated at Moidomia under North Lakhimpur P.S.?
- (II) Whether the accused person thereafter committed rape on the victim X?
- (III) Whether the accused person criminally intimidated the victim X?
- (IV) Whether the accused person on 11.10.2014 in his house situated at Moidomia under North Lakhimpur P.S. had committed aggravated penetrative sexual assault on the victim X?

### 10. **DECISION AND REASONS**:

PW.1, Musstt. Halima Begum is the mother of the victim X. She, in her evidence, stated that the accused, Md. Abidur Rahman is known to Contd...

her. The victim X is her daughter. She also stated that at the time of occurrence, the victim X was of 16 years old and was reading in school. She, in her evidence, also stated that there was love affairs between the accused, Abidur Rahman and the victim X. She also stated that her neighbour informed her that the accused and the victim X were talking with each other in the house of the accused secretly. Thereafter, she informed the matter to the school teacher of the victim X, and the school teacher advised her to lodge a case against the accused person, and accordingly, she lodged the case against the accused. She, in her evidence, further stated that when she asked the victim X, she stated that she was simply talking with the accused. PW.1, in her evidence, did not implicate the accused person regarding commission of any offence.

PW.2 is the victim X. She, in her evidence, stated that at the time of occurrence, she was reading in class-VIII. She also stated that she had love affairs with the accused, who is her neighbour. She, in her evidence, also stated that one day, she was talking with the accused in his house and the neighbours on seeing them talking with each other, informed the matter to her mother, and then her mother informed the matter to her school teacher. She also stated that her school teacher advised her mother to lodge a case, and accordingly her mother lodged the case. PW.2, the victim X, in her evidence, did not implicate the accused regarding commission of any offence with her.

PW.3, Smti Runu Bora is a retired teacher. She, in her evidence, stated that she knows the accused, Abidur Rahman and the victim X. She also stated that at the time of occurrence the victim X was reading in class-IV in Moidomia M.E. School. She, in her evidence, also stated that on the day of occurrence, the victim X did not attend her class, and then she sent a female student into the house of the victim X to enquire why the victim X did not attend her classes. She also stated that then the mother of the victim X informed them that the accused had committed rape on the victim X. After knowing about the occurrence, she advised the mother of the victim X to lodge a case before the police. She, in her cross-examination, stated that she had no direct knowledge

about the occurrence. She also stated that it is the mother of the victim X, who knows the actual occurrence. She, in her evidence, also stated that she had come to know from the mother of the victim X that the accused had committed rape on the victim X. But, PW.1, the mother of the victim X did not state that she had stated to Smti Runu Bora (PW.3) that the accused committed rape on the victim X. So, the evidence adduced by the PW.3, Smti Runu Bora that the mother of the victim X had informed her that the accused committed rape on the victim X, is no evidence at all. It is an inadmissible evidence.

PW.4, Musstt. Jahida Khatun is the teacher of Moidomia L.P. School. She, in her evidence, stated that she knows the accused person. The house of the accused is situated near Moidomia L.P. School, and at the time of occurrence, the victim X was reading in her school and she was absent in her class for 4 /5 days. Then, the Headmistress of the school went to the mother of the victim X to enquire regarding absence of the victim X in the school, and then the mother of the victim X told to the Headmistress that the victim X had not attended her classes in the school due to some ill-acts committed by the accused person on the victim X. She, in her evidence, also stated that the mother of the victim X reported the matter to the Headmistress of the school and not to her. She also stated that she had not gone to the place of occurrence to collect any information. From her evidence, it is found that the mother of the victim X had told the Headmistress of the school that the victim X had not attended her class in the school as the accused had done some ill-acts on the victim X. She further stated that the mother of the victim X had reported the matter not to her but to the Headmistress of the school. So, it is not known how she came to know about the occurrence that the accused had done some ill-acts on the victim X. She, in her evidence, also did not state whether she came to know about the occurrence either from the mother of the victim X or from the Headmistress of the school.

PW.1, Musstt. Halima Begum, the mother of the victim X and PW.3, Smti Runu Bora, the Headmistress of the school, in their evidence, did not state that they had narrated the occurrence to PW.4. So, the evidence

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adduced by the PW.4 is an inadmissible piece of evidence. It has no value in the

eye of law.

PW.5 is Dr. Kalpana Goswami, who had examined the

victim X. She, in her evidence, stated that the victim X at the time of her medical

examination was in the age of above 15 years and below 17 years, and at the

time of medical examination, she had not found any sign of recent forced sexual

intercourse on her person.

11. As the prosecution witnesses examined, mainly the

victim X and her mother (PW.1) have not implicated the accused person in their

evidence regarding commission of any offence, so elaborate discussion of the

evidence adduced by the PW.5, Dr. Kalpana Goswami in my opinion is not

necessary.

12. Because of what have been discussed and pointed out

here-in-above, it is appeared that the prosecution side has totally failed to prove

the charges under Sections 342/376/506 IPC and under Sec.6 of the POCSO Act

brought against the accused person, Md. Abidur Rahman @ Dilku and the

accused person deserves to be acquitted.

13. I, therefore, hold the accused person, Md. Abidur

Rahman @ Dilku not guilty and acquit him from the charges under Sections 342/

376/506 IPC and under Sec.6 of the POCSO Act. The accused person is set at

his liberty forthwith.

14. The accused person be released forthwith from the

judicial custody.

15. Given under my hand and the seal of this court on this

the 22<sup>nd</sup> day of June, 2018.

( M. A. Choudhury )
Special Judge,
Lakhimpur, North Lakhimpur.

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Dictated & corrected by me -

( M.A.Choudhury ) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

### **APPENDIX**

# 1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Musstt. Halima Begum.

PW.2 – Victim X.

PW.3 – Smti Runu Bora.

PW.4 - Musstt. Jahida Begum.

PW.5 – Dr. Kalpana Goswami.

### 2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

# 3. DOCUMENTS PRODUCED IN THE CASE:

Ext.1 – Statement of the victim X recorded u/s 164 CrPC.

Ext.2 – Medical Examination Report.

( M. A. Choudhury ) Special Judge, Lakhimpur, North Lakhimpur.