### IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

# Special (POCSO) Case No.-88/2017 U/S-8 of the POCSO Act.

State

- Versus -

Muzamil Hoque

: Accused person.

**Present**:

Shri P.P. Bairagi, AJS Special Judge, Nagaon.

# **Appearance & particulars:**

For the State : Mr. M.J. Neog, Ld. Special Public Prosecutor.

For the accused person : Mr. A. Rehman, Ld. Advocate.

Charge framed on : 11/04/2018.

Evidence recorded on : 13/06/2018, 11/10/2018,

20/12/2018, 19/08/2019.

Date of recording 313 Cr.P.C. statement: 04/01/2020.

Date of Argument : 24/02/2020.

Date of Judgment : 29/02/2020.

#### **JUDGMENT**

- 1. The case of the prosecution in brief is that the informant who is the father of the victim filed First Information Report before the Officer-in-Charge of Raha Police Station on 13/04/2015 stating inter alia that on the previous night at around 1 a.m, accused Muzamil Hoque entered into his house by opening a wooden window and kidnapped his daughter victim 'X' (name withheld) by gagging her mouth to the backside of his house. Thereafter, the accused tried to commit rape upon her; but somehow she managed to escape. Hence, this case.
- 2. On receipt of the said First Information Report, Raha Police Station Case No.-110/2015 was registered u/s-376(2-i)/511 of IPC, r/w Section-8 of the POCSO Act. After investigation, Charge Sheet was filed against accused Md. Muzamil Hoque u/s-457/376/511 of IPC, r/w Section-8 of the POCSO Act showing him as absconder.
- 3. On appearance of accused Muzamil Hoque before the court of learned Special Judge, Nagaon / Sessions Judge, Nagaon, copy was furnished to him and he was charged u/s-8 of the POCSO Act. The accused person pleaded not guilty when the charge was read over and explained to him.
- 4. During the trial, the prosecution has examined altogether 5(five) witnesses including the informant as well as the victim of the case and closed the evidence. The accused person was examined u/s-313 Cr.P.C. who claimed innocence and adduced no evidence.

5. I have heard learned counsels for both the sides and perused the record.

### 6. Now the point for determination is as follows:-

Whether on 12/04/2015 at about 1 a.m. the accused committed sexual assault on victim 'X' as alleged?

#### 7. **DISCUSSION, DECISIONS AND REASONS THEREOF**

Now let me see the evidence on record.

8. PW-1 is the father of the victim who has deposed that the incident was occurred 3(three) years ago. At that time, he was out of his house. He was informed by his wife that the accused person came to his house and tried to do some bad things with his daughter. On his arrival to his house, the villagers also informed about it. So, he filed the FIR. At the time of incident, his daughter was 13 years of age.

During his cross-examination, he has deposed that he is unable to remember the date and year in which his daughter was born. No age certificate was also annexed with the petition and he has no idea what the FIR contained. On the basis of the information gathered from neighbour, he came to know about the incident. The accused used to come to his house. No statement was recorded by police during investigation. He denied the suggestion that no offence was committed.

9. PW-2 Samsul Hoque has deposed that the victim is his covillager. The incident was occurred 3(three) years ago. He got the information from the informant that the accused had love affairs with the victim and the accused tried to take away the victim.

During his cross-examination, he has deposed that the informant's house is situated at 1 Km away from his house. He has no idea what relationship the accused had with the victim. No statement of this witness was taken by the Investigating Officer.

10. PW-3 is the victim to the case. She deposed that the incident was occurred near about 3(three) years ago at about 2 a.m. At that time, she was sleeping in her room. Someone had entered into her room. As such, she raised hue and cry and then the said person fled away. Only on suspicion, she told about the name of accused Muzamil Hoque as he used to come to her house. On the same night, her mother and grandmother went to the house of the accused; but the family members of the accused had refused the involvement of the accused with the alleged offence. Police recorded her statement. Her statement u/s-164 Cr.P.C. was also recorded by Magistrate. Ext.-1 is the statement recorded u/s-164 Cr.P.C. whereon Ext.-1(1) and Ext.-1(2) are her signatures.

During her cross-examination, she has deposed that she could not identify the person who had entered into her room. The person fled away when she raised voice. The accused is her neighbour and before the incident accused did never give any obscene gesture to her. Since she was inside the mosquito net, so she was unable to say whether the intruder was an aged person or an young man. Her father filed this case on suspicion who was absent at the time of incident.

11. PW-4 Rahimuddin has deposed that at the time of incident, he was in his house. At about 1:30 a.m, the mother of the victim came

to his house and informed him that the accused had taken away the victim and he went to the house of the accused; but the family members of the accused refused it.

During his cross-examination, he has deposed that he along with VDP President Nurul Amin Hoque and two others went to the house of the accused. He has not seen any broken door or window during his visit in the house of the informant.

- 12. PW-5 Nurul Amin has deposed that he knew the accused and the victim. Both of them are his co-villagers. On the day of incident at about 11 /12 p.m. the wife of the informant came to his house and intimated him that someone had taken away her daughter. He went to the house of the informant and saw the victim in their house. On being asked, the victim has reported that one man came and lifted her. But she was unable to identify that person.
- 13. From the evidence of PW-3 who is the victim as well as star witness of the prosecution case, it is noticed that while she was sleeping, someone entered into her room. As she raised hue and cry, then that person fled away and out of suspicion she told about the name of Muzamil Hoque who used to come to her house. From cross-examination also, it can be said that she could not identify the person who had entered into her room. She then unable to see whether that person was young or elderly person. From the evidence, it is seen that she has not implicated the accused persons with the alleged offence. Only out of suspicion, she told about the name of the accused that the accused was involved. This witness was unable to identify the person. Therefore, it can be said that the evidence of this witness is insufficient to held guilty to the accused person. PW-1 being the father of the victim has deposed that his wife informed him that the accused

came to his house and tried to do some bad things. From his crossexamination, it can be said that he had not seen the incident. Only on the basis of information received from the neighbours, he said about the involvement of the accused person. So, it can be said that he has also deposed what the neighbours told to him. So, his evidence can be said as hearsay evidence. The evidence of PW-2 also scrutinized; but his evidence also insufficient to hold guilty to the accused person. From the evidence of PW-4 and PW-5, it can be said that they have not seen the incident what was actually happened. They were reported by the wife of the informant; but the said lady i.e. the wife of the informant was not examined by the prosecution. From the evidence on record, it can be said that the victim has failed to identify the person who was involved with the offence as alleged. That apart, there is no eyewitness before the court to understand that the accused has committed the offence as alleged. Thus, the evidence of the prosecution is insufficient to convict the accused person and on the basis of the evidence, the accused cannot be convicted and the accused has able to rebut the presumption about his involvement with the offence. Accordingly, the accused is acquitted and set at liberty.

- 14. Bail bond of the accused person will be automatically cancelled after expiry of 6(six) months if no appeal is preferred.
- 15. This Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this court on this 29<sup>th</sup> day of February, 2020 at Nagaon.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

## APPENDIX :-

#### Oral evidence :-

- PW-1 Father of the victim (name withheld).
- PW-2 Md. Samsul Hoque.
- PW-3 Victim 'X' (name withheld).
- PW-4 Md. Rahim Uddin.
- PW-5 Md. Nurul Amin @ Bulbul.

# Documentary evidence :-

Ext.-1 Statement of the victim recorded by Magistrate u/s-164 Cr.P.C.

Defence side did not adduce any evidence.

Special Judge, Nagaon.