### DISTRICT- BAKSA

# IN THE COURT OF SPECIAL JUDGE, BAKSA, MUSHALPUR

#### SPL. POCSO CASE NO. 54/18

(u/s 448/323/34 IPC R/W Section 18 of the POCSO Act)

State of Assam

-versus-

Samed Ali and Karim Ali..... Accused

Present- Smti. M.C. Bordoloi, M.A., L.L.B., (A.J.S.), Judge Special Court, Baksa

#### Appearance:

Mr. Ranjit Chetri.....Public Prosecutor for the State

Mr. Mritunjoy Mazumdar.....Advocate for the accused persons

Date of charge:

04.12.18

Date of evidence:

12.03.19, 26.07.19, 12.09.19, 19.11.19

Statement recorded on: 09.01.2020

Date of argument:

09.01.2020

Date of judgment:

22.01.2020

#### <u>JUDGMENT</u>

One Md. Jalil Ali of Village Chiknibari under Tamulpur P.S., disrict Baksa lodged an ejahar with the Tamulpur Police Station on 13.05.2016 alleging inter alia that on the 12<sup>th</sup> day of May, 2016 at dwelling house with intent dwelling house with intent to sexually assault his minor daughter (name withheld) but his attempt was foiled when the victim girl raised a cry of alarm, hearing which the informant arrived at the scene of occurrence and succeeded in apprehending one of the accused while the other away fled away therefrom. The informant also alleged that thereafter accused Sohaib Ali, Umed Ali, Jamir Ali and some other persons armed with 'dao', 'lathi', dagger etc came to his premises and assaulted his family members including himself and also damaged his property, taking advantage of which situation, the apprehended accused fled away. Hence the ejahar.

Upon receipt of the ejahar, a case vide Tamulpur P.S Case No. 134/16 u/s 448/325/34 IPC R/W Section 18 of the Pocso Act was registered and investigated upon.

Upon completion of investigation, charge-sheet vide No. 168/16 dated 13.05.2016 against the accused Samed Ali and Md. Karim Ali was laid before Ld. CJM Nalbari, u/s 448/323/34 R/W Section 18 of the POCSO Act showing accused Karim Ali as absconder, which was put up before the Hon'ble Sessions Judge Nalbari and accordingly Special Pocso Case was registered and summons issued to the accused persons.

Thereafter with the creation of the Court at Baksa and the cause of action having arisen within the jurisdiction of Baksa Court, the case record was transferred from the Court of Hon'ble Sessions Judge Nalbari to the Court at Baksa.

Hon'ble District Judge, Baksa cum Judge Special Court, Baksa having secured the attendance of the accused person in the Court, serviced copies of the case to the accused persons on their appearance in compliance of provision of Section 207 Cr.PC and vide order dated 04.12.2018, framed a formal charge u/s 448/323/34 IPC R/W Section 18 of the POCSO Act, against the accused persons. The charge on being read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

It is pertinent to mention herein that with the designation of the instant Court as Special Court vide Hon'ble Gauhati High Court, Guwahati notification dated 02.01.2020, the present case record was transferred by the Hon'ble Sessions Judge Baksa to this Court for disposal.

The prosecution in order to prove its case examined as many as 6 numbers of witnesses including the I/O. The defence side cross examined all the prosecution witnesses but declined to adduce defence evidence.

Judge Spi Spishalour

Statement of the accused persons u/s 313 Cr.PC was recorded wherein the accused pleaded innocence and declined to adduce defence evidence.

From the trend of cross examination, and the statement of the accused recorded u/s 313 Cr.PC, it appears that the defence plea is that of total denial of guilt.

I have heard the arguments advanced by the Ld. Counsels of both sides and also perused the evidence available on record.

The point for determination that has arisen in the instant case are as follows:-

#### **POINT FOR DETERMINATION:**

- 1. Whether on the 12th day of May, 2016 at about 7.30 pm at village Chiknibari under Tamulpur P.S, accused Samed Ali and Karim Ali committed house trespass by entering into the house of the informant with intent to commit sexual assault on the informant's minor daughter in furtherance of their common intention?
- 2. Whether on the same day, time and place, the accused persons in furtherance of their common intention voluntarily caused hurt to the informant party vis Jalil Ali, Rahila Khatun and Aklima Begum?
- 3. Whether on the same day, time and place, accused persons attempted to commit penetrative sexual assault on the informant's minor daughter?

My decision on the above points for determination along with reasons is given hereinunder:-

#### DISCUSSION, DECISION AND REASONS THERE FOR:

To address the points for determination so framed, it will be worthwhile to peruse the evidence available on record and I proceed to do so.

PW-1, the victim in her evidence stated that the occurrence took place about 2 years back and that on the fateful day at about 7

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pm, accused Samed Ali came to her and talked with her and that the local people having seen them indulging in a talk, suspected foul play and reported the same to her parents whereupon her father lodged the case against the accused person. PW-1 further stated that she was in a love relationship with the accused Samed Ali, much prior to the occurrence.

In her cross-examination, PW-1 clarified that there was no physical relationship with accused Samed Ali prior to their marriage and the accused persons did not physically assault her and that the case had been filed due to misunderstanding and presently she has been leading peaceful conjugal life with the accused Samed Ali and is a mother to a child.

PW-2, the informant of this case in his evidence stated that accused Samed Ali and his victim daughter were in a love relationship and that he had no knowledge about the same and that on the fateful day when the elder brother of the accused Samed Ali abused him in connection with the love affair between his daughter and the accused and imputed disgraceful remarks on his victim daughter, he filed a case against the accused. He also stated that a scuffle took place between him and the elder brother of the accused Samed Ali, whereby he sustained injuries and had to undergo medical treatment. He also stated that his victim daughter is presently married to accused Samed Ali and has a child.

In his cross-examination, he clarified that he had filed the present case as the local public had pressurized him to do so.

PW-3 mother of the victim also deposed in tune with that of her husband PW-2.

PW-4 Insan Ali deposed that the victim had love affairs with the accused Samed Ali and that when the victim's father having learnt about the love relationship, refused to marry off his daughter to the accused Samed Ali, the victim girl on her own accord went to the house of the accused whereupon the informant filed the case.

In his cross-examination, PW-4 revealed that accused Karim Ali is not related to accused Samed Ali and that the victim and the accused Samed Ali are presently leading happy conjugal life.

PW-5 Jaharuddin Ali deposed that on the fateful day, he along with some villagers found the accused Samed Ali and the victim girl together in the victim's house and that on askance, accused denied any unlawful activity between them and that thereafter the relative of accused Samed Ali took him away therefrom. PW-5 also stated that on earlier occasions also accused Samed Ali used to visit the house of the victim girl and despite being warned not to do so the accused continued to frequent the house of the victim girl, whereupon the case was filed. PW-5 also stated that the victim was 16 years of age at the time of occurrence.

In his cross-examination, PW-5 disclosed that he knew about the love relationship between accused Samed and the victim girl and as the informant(victim's father) did not have knowledge about the said relationship, he filed the case out of misunderstanding against Samed Ali and against accused Karim Ali on suspicion. To a pointed query of the defence, PW-5 disclosed that he learnt about the age of the victim from the informant.

PW-6 is the Investigating Officer of the case. His evidence is that of formal character. He deposed that on 13.05.2016, he was posted at Tamulpur as an attached officer and on the said day, consequent to the lodgment of an FIR by the informant, a case was registered vide Tamulpur P.S Case No. 134/16 and the responsibility of investigation was given to him and during the course of investigation he went to the place of occurrence, traced the sketch map of the place of occurrence, caused the victim's medical examination, caused the victim's statement to be recorded in court, collected the victim's medical report, seized the birth certificate of the victim being Mat. Ext-1 and on completion of investigation submitted charge-sheet against the accused person.

PW-6 identified the ejahar as Ext-1 and the signature of the then O/C of Tamulpur P.S Khagen Chandra Das as Ext-1(2). He also exhibited the sketch map of the place of occurrence as Ext-2 and his signature thereon as Exbt-2(1). He identified the charge-sheet as Ext-3 and his signature thereon as Exbt-3(1).

In his cross-examination, he disclosed that he had not recorded the statement of the informant's neighbours namely

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Champak Hussain, Sunnat Ali nor he had made any seizures from the place of occurrence.

This in nutshell, is the evidence available on record.

Perusal of the evidence of the victim and the informant clearly discloses that the case was a fallout of misunderstanding. Neither the informant nor the victim girl had testified to the fact that the accused persons had illegally trespassed into their house on the fateful night and attempted to commit penetrative sexual assault or even sexual assault on the victim's person or to cause hurt to the victim or other members of her family. Rather it is forthcoming that on the fateful day, the victim and the accused Samed Ali were indulging in a talk and the local public did not approve of such display of affectionate relationship between the accused Samed Ali and the victim, which led to the lodgment of case by the informant. Though Pws had deposed that accused Samed Ali accompanied by accused Karim Ali went to the informant's house on the fateful day but in his cross examination he himself negated the absence of accused Karim Ali at the scene of occurrence, stating that case was lodged against accused Karim Ali only on mere suspicion. The presence of accused Samed Ali at the informant's house can not be held to be house trespass as the informant or the victim did not testify in respect of the accused's forceful entry into their premises, rather the admitted cordial relationship between the accused Samed Ali and the victim might have caused his easy ingress to the informant's house

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In so far as the age of the victim at the relevant time is concerned, the victim as well as the informant had testified that the victim was aged 18 years of age at the relevant time. Though the PW-6 (I/O) had identified a Mat. Ext being a photocopy of birth certificate but prosecution had failed to bring on record the original of the said birth certificate to prove its genuineness. The photocopy of the document not proved will not come to the aid of prosecution. Accordingly, the alleged minority of the victim girl also remains short of being proved.

There is also no evidence on record in respect of the accused persons assaulting and causing hurt to the informant, Rahila Khatun or Aklima Begum.

In view of the above scanty evidence, the accused Samed Ali and Karim Ali cannot be held guilty of commission of the offence of house trespass and of voluntarily causing hurt to the victims. There is also no evidence in respect of the accused Samed Ali attempting to cause penetrative sexual assault or even sexual assault on the victim. Prosecution case therefore fails.

Accused Samed Ali and Karim Ali are liable to be acquitted of the charges brought about against them by prosecution, thus.

Victim compensation in the instant case is not recommended in the facts circumstances of the case.

#### ORDER

In the light of the above discussions, accused Samed Ali and

Karim Ali are acquitted of the charges u/s 448/323/34 IPC R/W

Court Section 18 of the POCSO Act and set at liberty forthwith.

The bail bond of the accused possessions.

The bail bond of the accused persons shall remain in force for a period of 6 months with effect from today in view of the provisions of Section 437-A Cr.PC.

Given under my hand and seal of this court on the 22<sup>nd</sup> day of January, 2020.

(Smti. M.C. Bordoloj) udge Spi Court

Judge Special Court, Baksa Mushalour

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Dictated and corrected by me

(Smti. M.C. Bordoloi) udge Spi Court
Judge Special Court, Battaka Mushalpur

### **APPENDIX**

## Prosecution witness:

PW1 Victim(name withheld) PW2 Md. Jalil Ali (informant) PW3 Rahila Khatun PW4 Insan Ali PW5 Jaharuddin Ali PW6 Lohit Medhi (I/O)

## **Prosecution Exhibits:**

Ext.1 FIR.

Ext.1(1) Signature of Md. Jalil Ali (informant)

Ext.1(2) Signature of Khagen Ch. Das

Ext.2 Sketch map.

Ext.2(1, Ext.3)

Spi Court Ext.3(1)

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Charge-sheet.

Signature of Lohit Medhi

**Defence witness:** Nil.

Material exhibits: Photocopy of a birth certificate

Court witness: Nil.

Judge Special Court Bakks Mushalbur