

**IN THE COURT OF SPECIAL JUDGE (F.T.C), LAKHIMPUR,
NORTH LAKHIMPUR.**

P R E S E N T

Sri P.C. Kalita, A.J.S.,
Special Judge (F.T.C.),
Lakhimpur, North Lakhimpur.

Special (POCSO) Case No.09/2019.

U/s-342 of IPC, R/w-Sec.6 of POCSO Act.

State of Assam

-Versus-

Md. Habijul Islam, Accused.

A P P E A R A N C E

For the State : Mr. M.Gogoi, Ld. Special P.P.
For the Accused : Mr. N. Borah, Ld. Advocate.

Date of evidence : 03.05.2019, 04.05.2019, 06.05.2019.
Argument heard on : 06.05.2019.
Judgment delivered on : **06.05.2019.**

J U D G M E N T

1. The prosecution case, inter-alia, in brief, is that informant Md. Sahed Ali lodged an ejahar (Ext.1) on 28.01.2019 alleging that on that day, while his daughter i.e. the prosecutrix, was playing in the paddy field, the accused person after taking her to his house, committed forceful rape on her and thereafter, the accused person had sent her to the paddy field giving threats with dire consequences, if she would disclose the said matter to others.

2. On receipt of the ejahar, the O/C of North Lakhimpur P.S. registered a case vide N.L. P.S. Case No.74/2019 dtd. 24.02.2019, u/s-

376(A,B) of IPC, R/w- Sec.6 of POCSO Act and then the police conducted the investigation of the case and after completion of the investigation submitted charge-sheet u/s- 376(A,B) of IPC, R/w- Sec.6 of POCSO Act against the accused person Md. Habijul Islam.

3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, charge under section- 342 of IPC, R/w Sec.6 of POCSO Act are framed against the accused, the same are read over and explained to him to which he has pleaded not guilty.

4. During trial prosecution has examined as many as 6(six) witnesses. Considering the stand of PWs and at the instance of Ld. Special P.P., further prosecution evidence is closed. The accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINTS FOR DETERMINATION:**

i) *Whether the accused on or about 23.01.2019 at about 3:00 p.m. at village- No.1 Borchala, under North Lakhimpur P.S., wrongfully confined the prosecutrix (aged 6 years), daughter of informant Md. Sahed Ali, inside your house, and thereby committed an offence punishable under section 342 of the IPC, as alleged?*

ii) *Whether the accused on or about the same date, time and place, had committed aggravated sexual assault on the person of the prosecutrix inside his house, and thereby committed an offence punishable under section 6 of POCSO Act, as alleged ?*

DISCUSSIONS, DECISION AND REASONS THEREOF:

6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld.

Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.

7. PW.1, Md. Sahed Ali (informant), stated that the victim girl is his daughter, who is now 6 years old. He knows the accused person. The occurrence took place about 3 months back. The accused person is his neighbour. The accused person has a daughter at the same age of his victim daughter. On the day of occurrence, his victim girl was playing with the said daughter of accused person. As the accused person had loudly asked his victim girl to go home, then she got frightened and went to her house by crying. At that time, some local people went to his house and as instigated by those people, he lodged the case at the police station. On being asked, the victim girl told him that the accused person had not committed any bad acts upon her. The police got the victim girl medically examined and also sent her to the Court for recording her statement. Ext.1 is the ejahar lodged by him and Ext.1(1) is his signature thereon.

8. PW.2, the prosecutrix, stated that she knows the accused person, who is her neighbour. The name of daughter of accused person is Nargis, who is her friend. One day, she had gone to the house of said Nargis to play with her and while they were playing, the accused person rebuked her to go home and on fear, she returned home by crying. The accused person did not commit any bad acts upon her. police got her medically examined and got her statement recorded through the Court. The informant is her father.

9. PW.3, Mustt. Kulsom Bibi, stated that she knows both the parties. The occurrence took place about 3 months back. She heard that the victim girl was playing with the daughter of accused person and as the accused person rebuked the victim girl to go home, then she got frightened and went to her house by crying. She doesn't know as to

why the informant had lodged case subsequently.

10. PW.4, Mustt. Hareja Khatun and PW5 Md. Hajarat Ali in their respective evidence have stated in the same tune as stated by PW3.

11. PW6, Md. Habibur Rahman, stated that he knows both the parties, but he does not know anything about the alleged occurrence.

Appreciation of evidence:

(Offence u/s- 6 of POCSO Act).

12. The victim (PW2) is the prime witness in the instant case. Her deposition is that on the day of occurrence, she had gone to the house of accused person to play with his (accused) daughter Nargis and while they were playing there, the accused person rebuked her to go home and on fear, she returned home by crying. The accused person did not commit any bad acts upon her.

During cross, PW2 stated that as instructed by the police, she had stated in her statement recorded u/s- 164 of Cr.P.C.

From the above evidence of PW2, it is seen that the victim girl has not implicated the accused person regarding his involvement in the commission of alleged offence of aggravated sexual assault. Except rebuking her (victim), the accused did not commit any acts against her. Rather, she categorically stated that the accused did not do any bad acts upon her.

13. Likewise, the father of the victim (PW1) stated that while his victim daughter (PW2) was playing with the daughter of accused person, the accused person had loudly asked his victim daughter to go home, then she got frightened and went to her house by crying. Thereafter, at the instigation of local people, he lodged the case at the police station. On being asked, the victim girl told him that the accused

person had not committed any bad acts upon her

14. PW3, PW4, PW5 and PW6 all are hearsay witnesses and they do not support at all the prosecution case.

15. It is, thus, seen that no offence is made out u/s- 6 of POCSO Act against the accused person.

16. ***(Offence u/s- 342 of IPC).***

PW2 (the victim) in her deposition stated that she had gone to the house of the accused person to play with his (accused) daughter, being her friend, but she nowhere stated that accused person wrongfully confined her in his house. Likewise, PW1, father of the victim also stated.

So, the ingredients of offence u/s- 342 of IPC are lacking in the instant case.

17. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s-342 of IPC, R/w- Sec. 6 of POCSO Act against the accused person beyond all reasonable doubts. Hence, I acquit the accused person from the said offences.

18. The accused person is set at liberty forthwith.

19. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 6th day of May, 2019.

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Transcribed & typed by me:
Sri D. Chetia, (Steno)

APPENDIX:

Prosecution witnesses:

PW.1, Md. Sahed Ali
PW.2, the prosecutrix
PW.3, Mustt. Kulsom Bibi,
PW.4, Mustt. Hareja Khatun
PW5, Md. Hajarat Ali
PW6, Md. Habibur Rahman

Prosecution exhibits:

Ext.1 - Ejahar

Defence witnesses:

Nil.

Defence exhibits:

Nil

(P.C. Kalita)
Special Judge (F.T.C),
Lakhimpur, North Lakhimpur.