

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

P R E S E N T - M.A.Choudhury,
Special Judge,
Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.109/2018.

Under Section - 10 of the POCSO Act.

P A R T I E S

State of Assam. ... Complainant.

-versus-

Sri Chow Tamika Namchoom. ... Accused.

ADVOCATES APPEARED IN THE CASE :

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

Date of framing of charge. : 29.09.2018.
Date of taking evidence. : 22.01.2019, 14.02.2019 and 29.03.2019.
Date of hearing Argument. : 22.04.2019.
Date of delivery of Judgment.: 22.04.2019.

J U D G M E N T

1. The case of the prosecution side may, in brief, be described thus :

The informant, Sri Khyoda Tatung on 17.12.2017 lodged an ejahar with Harmutty Police Out Post under Laluk Police Station to the effect that his daughter victim X, a minor girl has been reading in class-X in St. Xavier's School, Harmutty by staying in the Hostel named Fortune Hostel, Harmutty, owned by the accused, Sri Chow Tamika Namchoom. On the night of 15.12.2017 at about 10 pm,

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while the victim X was sleeping along with her friends in the Hostel, at that time the accused, Sri Chow Tamika Namchoom entered into the room and tried to rape her by holding her body, kissing her hands, lips, face, neck and touching her other private parts. His daughter victim X somehow managed to release herself from the attack of the accused person with the help of her friends who were in the room.

2. On receiving the ejahar, the In-charge of Harmutty Police Out Post made a GD Entry of the same vide Harmutty Police Out Post GD Entry No.270 dtd. 17.12.2017 and forwarded the ejahar to the Officer-in-charge of Laluk Police Station for registering a case under proper sections of Law and he had taken up the charge of investigation of the case. On receiving the ejahar, the Officer-in-charge of Laluk Police Station registered a case vide Laluk P.S. Case No.373/2017 under Sections 376/ 511 IPC and under Section 4 of the POCSO Act.

3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence i.e., the Fortune Hostel, Harmutty, prepared sketch map of the place of occurrence and recorded the statements of the witnesses u/s 161 CrPC. The I.O. arrested the accused, Sri Chow Tamika Namchoom and forwarded him before the court. The I.O. got the victim X medically examined by a doctor at Laluk Hospital. The I.O. forwarded the victim X before the court for recording her statement u/s 164 CrPC, and accordingly, the statement of the victim X was recorded u/s 164 CrPC. The I.O. after completion of the investigation on being found sufficient incriminating materials against the accused, Sri Chow Tamika Namchoom under Section 8 of the POCSO Act, submitted the charge-sheet against the accused, Sri Chow Tamika Namchoom under Section 8 of the POCSO Act.

4. The accused, Sri Chow Tamika Namchoom made his appearance before the court and necessary copies were furnished

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to him. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient materials against the accused person under Section 10 of the POCSO Act in the case record, the charge under Section 10 of the POCSO Act had been framed against the accused, Sri Chow Tamika Namchoom. The charge was 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 including the M.O.

6. The recording of the statement of the accused person u/s 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.

7. The accused person denied to adduce any evidence in his defence.

8. Heard Argument from the learned advocates of both sides.

9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.

10. The point for determination in this case is :

(I) Whether the accused, Sri Chow Tamika Namchoom on 15.12.2017 at night at Fortune Hostel, Harmutty under Laluk Police Station, Dist. Lakhimpur, being the Warden of the Fortune Hostel, committed aggravated sexual assault on the person of the victim X, a minor girl, who was a hosteler of the Fortune Hostel?

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11. DECISION AND REASONS THEREOF

The prosecution side examined 5 (five) witnesses. PW.1 is the victim X. PW.2 is Sri Khyoda Tatung, who is the father of the victim X as well as informant of the case. PW.3, Sri Ajit Singh is an independent witness. PW.4, Smti Baby Singh is the wife of PW.3, Sri Ajit Singh. PW.5 is Dr. Rupanya Borgohain, who is the M.O. of the case.

PW.1, the victim X in her evidence stated that she had read at St. Xavier's School at Harmutty from class-III to class-X by staying in a private hostel named Fortune Hostel, Harmutty outside the school campus. The owner of the Fortune Hostel was the accused, Sri Chow Tamika Namchoom. She in her evidence also stated that the occurrence had taken place on 15.12.2017 at night at Fortune Hostel, Harmutty. On the night of occurrence, she was in the Fortune Hostel. She also stated that the Warden of the hostel was Smti Mythen Namchoom, who is the wife of the accused, Sri Chow Tamika Namchoom. She in her evidence also stated that on the night of occurrence, her Warden, Mythen Namchoom had gone to the hospital along with the accused as she had been fallen ill. She also stated that then, she went to the house of her Warden as her Warden left her minor child, who was aged about 7 years in her house along with two other little students, who were also staying in the hostel for reading in the school. She in her evidence also stated that at first, she watched TV along with the aforesaid two little children and the minor child of the Warden, and thereafter she went to sleep along with the children. She further stated that at night, the accused came and awoke her up from sleep and asked her to go to her room. She in her evidence also stated that then, she got afraid and went to her room. On the following morning, she called her parents, and thereafter her father and mother came and her father lodged an ejahar with the Police Station. Then, she was taken to Harmutty Police Out Post. The police got her medically examined. The police also got her statement recorded u/s 164 CrPC. She in her evidence also stated that the accused had not

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done any sexual assault on her person. She also stated that the accused person had not touched her body. She also stated that she had given her statement before the court as tutored by the police. The accused person had not misbehaved with her.

This is the evidence adduced by the PW.1, the victim X. On a careful scrutiny of the evidence of PW.1, the victim X, I do not find any incriminating material in her evidence against the accused person for committing any offence.

PW.2, Sri Khyoda Tatum is the father of the victim X. PW.2, Sri Khyoda Tatum in his evidence stated that the victim X is his daughter. His daughter victim X had read from class-III to class-X at St. Xavier's School, Harmutty. He in his evidence also stated that at first, his daughter victim X read in St. Xavier's School, Harmutty by staying in the school Hostel. In the year, 2017, he brought his daughter victim X to a private hostel named Fortune Hostel, Harmutty, from the school Hostel. He also stated that the owner of the Fortune Hostel is the accused, Sri Chow Tamika Namchoom. His daughter victim X started to live in the Fortune Hostel from the year, 2017. He in his evidence also stated that the occurrence had taken place in the year, 2017 at night in the Fortune Hostel, Harmutty. At the time of occurrence, his daughter was in the Fortune hostel. On the following morning of the night of occurrence, one of the friends of his daughter called him over mobile phone and stated that the accused, Sri Chow Tamika Namchoom, the owner of the hostel awoke his daughter when she was sleeping in the house of the accused along with the child of the accused and two other children of the hostel and asked his daughter to go away from his house. He in his evidence also stated that his daughter victim X had not stated to him anything over mobile phone. Thereafter, he along with his brother, Khyoda Agen came to the Fortune Hostel, Harmutty and took his daughter victim X from the hostel to Harmutty Police Out Post. He in his evidence also stated that in the Harmutty Police Out Post, he lodged an ejarah against the

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accused person. He further stated that on being asked, his daughter victim X stated that the accused person had not done any bad acts with her. He in his cross-examination stated that the ejahar was written by his brother, Khyoda Agen and he did not know what had been written in the ejahar. He also stated that the case has been filed on misconception.

This is the evidence adduced by PW.2, Sri Khyoda Tatung, the father of the victim X as well as informant of the case. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person for committing any offence.

PW.3, Sri Ajit Singh is the landlord of the Fortune Hostel, Harmutty running by the accused, Sri Chow Tamika Namchoom. PW.4, Smti Baby Singh is the wife of PW.3, Sri Ajit Singh. There is no any incriminating material in the evidence adduced by the PW.3, Sri Ajit Singh and PW.4, Smti Baby Singh against the accused person for committing any offence.

PW.5 is Dr. Rupanya Borgohain, Sr. Medical & Health Officer, Laluk Model Hospital, Lakhimpur, who had examined the victim X. She in her evidence stated that she did not find sign of any injury upon the person of the victim X at the time of her examination. She proved her Medical Examination Report as Ext.3 and Ext.3(1) is her signature in it.

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 charge under Section 10 of the POCSO Act brought against the accused, Sri Chow Tamika Namchoom or under any other panel sections. The accused person deserves to be acquitted.

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13. I, therefore, hold the accused, Sri Chow Tamika Namchoom not guilty and acquit him from the charge under Section 10 of the POCSO Act. The accused person is set at his liberty forthwith.

14. The bail bond of the accused person is cancelled and his surety is discharged.

15. Given under my hand and seal of this court on this the 22nd day of April, 2019.

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

Dictated & corrected by me -

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

Transcribed & typed by-
Sri Satyabrata Kshattri, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE :

PW.1 - Victim X.
PW.2 - Sri Khyoda Tatung, the father of the victim X as well as informant of the case.
PW.3 - Sri Ajit Singh.
PW.4 - Smti Baby Singh.
PW.5 - Dr. Rupanya Borgohain, the M.O. of the case.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE : Nil.

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3. DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE :

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

Ext.2 - Ejahar.

Ext.3 - Medical Examination Report.

4. DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE :

Nil.

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