

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.90/2019.

Under Section - 366 IPC and under Section 8 of the POCSO Act.

P A R T I E S

State of Assam. ... Complainant.

-versus-

Md. Hafijur Rahman @ Habu Ali. ... Accused.

ADVOCATES APPEARED IN THE CASE :

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

Mrs. Hem Prabha Das, Advocate. ... For the Accused.

Date of framing of charge. : 28.08.2019.

Dates of taking evidence. : 21.10.2019 and 05.12.2019.

Date of hearing Argument. : 05.12.2019.

Date of delivery of Judgment. : 11.12.2019.

J U D G M E N T

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

On 16.08.2017, the informant, Md. Abdul Hamed of village Chaboti Kalyanpur, under North Lakhimpur Police Station lodged an ejahar with Lilabari Police Out Post under North Lakhimpur Police Station to the effect that the victim X is his grand daughter. On 07.08.2017 at about 7 pm in the evening, the victim X went to the

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shop situated nearby their house for purchasing some goods. While the victim X was returning back to the house, at that time, the accused Md. Habu Ali kidnapped her. Then, he and his family members searched for the victim X, but could not find her.

2. On receiving the ejahar, the In-charge of Lilabari Police Out Post made GD entry of the same vide Lilabari Police Out Post GD Entry No.261 dtd. 16.08.2017 and forwarded the same to the Officer-in-charge of North Lakhimpur Police Station for registering a case under proper sections of Law. On receiving the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide North Lakhimpur P.S. Case No.1053/2017 under Section 366(A) IPC.

3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared the sketch map of the place of occurrence. The I.O recorded the statements of the witnesses u/s 161 CrPC. The I.O. arrested the accused, Md. Hafijur Rahman @ Habu Ali and forwarded him before the court. The I.O. recovered the victim X and got her medically examined by the doctor at North Lakhimpur Civil Hospital. Thereafter, the I.O. got the statement of the victim X recorded u/s 164 CrPC. After completion of investigation of the case on being found sufficient incriminating materials against the accused, Md. Hafijur Rahman @ Habu Ali under Section 366(A) IPC, submitted the charge-sheet against the accused, Md. Hafijur Rahman @ Habu Ali under Section 366(A) IPC.

4. On receiving the charge-sheet, the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, took cognizance of the case and after complying with the provisions of Section 207 CrPC committed the case to this court as the offence u/s 366(A) IPC is exclusively triable by the court of Sessions.

5. The accused, Md. Hafijur Rahman @ Habu Ali made his appearance before the court and necessary copies were furnished to him. Accordingly, the case was converted from Sessions

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case to a case under POCSO Act and registered it as Special (POCSO) Case No.90/ 2019. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the accused, Md. Hafijur Rahman @ Habu Ali under Section 366 IPC and under Section 8 of the POCSO Act in the case record, the charges under Section 366 IPC and under Section 8 of the POCSO Act had been framed against the accused, Md. Hafijur Rahman @ Habu Ali. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution side examined 6 (six) witnesses.

7. 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.

8. The accused person led no evidence in his defence.

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

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

11. The points for determination in this case are :

(I) Whether the accused, Md. Hafijur Rahman @ Habu Ali on 07.08.2017 at about 7 pm at village, Chaboti Kalyanpur under North Lakhimpur Police Station, Dist. Lakhimpur, kidnapped the victim X, a minor girl above the age of 12 years with intent that she might be compelled or knowing it to be likely that she would be compelled to marry the accused person or that she might be forced or seduced to illicit intercourse with him?

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(II) Whether the accused, Md. Hafijur Rahman @ Habu Ali after kidnapping the victim X, a minor girl above the age of 12 years, committed sexual assault on her person?

DECISION AND REASONS THEREOF

12. PW.1 is the victim X. PW.1, the victim X in her evidence stated that Md. Abdul Hamed, who is the informant of the case, is her maternal grand father. According to her evidence, she knows the accused, Md. Hafijur Rahman @ Habu Ali. The house of the accused, Md. Hafijur Rahman is situated in her own village. The occurrence had taken place about two years back. On the date of occurrence, her quarrelling had taken place with her mother, Musstt. Samla Khatun. After quarrelling on the following day of the occurrence in the evening, she without informing anyone of her family members, went to the house of her aunt at Gogamukh. She stayed for one day in the house of her aunt at Gogamukh. Thereafter, she returned back to her house. When she came back to her house, then she came to know that a case was lodged with Lilabari Police Out Post under North Lakhimpur Police Station regarding her missing. Thereafter, the police came to her house and took her along with them. The police got her medically examined at North Lakhimpur Civil Hospital. Her statement was also recorded u/s 164 CrPC in the court. She in her evidence stated that the accused, Md. Hafijur Rahman had not kidnapped her. She also stated that the accused person had not done any sexual intercourse with her.

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

13. PW.2, Md. Abdul Hamed is the informant of the case as well as grand father of the victim X. According to his evidence, the victim X is his grand daughter through his daughter, Musstt. Samla

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Khatun. He knows the accused, Md. Hafijur Rahman, whose house is situated nearby his house. The house of his daughter, Musstt. Samla Khatun is situated nearby his house. The victim X is the daughter of Musstt. Samla Khatun. The occurrence had taken place about two years back. On the date of occurrence in the evening, his daughter Musstt. Samla Khatun came to his house and stated that the victim X was missing from her house. As his daughter, Musstt. Samla Khatun asked him to lodge an ejahar with the Police Station regarding missing of the victim X, he lodged the ejahar with Lilabari Police Out Post under North Lakhimpur Police Station regarding missing of the victim X. He in his evidence stated that he had not written the ejahar, it was written by an ejahar writer. He did not know what has been written in the ejahar. After seven days from the date of filing of the ejahar, the victim X returned back to her house. The victim X then stated to him that she had gone to Gogamukh in the house of his younger daughter and stayed there. The victim X stated to him that she had not been kidnapped by the accused person. The victim X also stated to him that the accused, Md. Hafijur Rahman had not done any sexual act with her.

This is the evidence adduced by PW.2, Md. Abdul Hamed, the grand 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 regarding commission of any offence.

14. PW.3, Md. Jiyabur Rahman in his evidence stated that the victim X is his niece through his sister, Musstt. Samla Khatun. The house of his sister, Musstt. Samla Khatun is situated nearby his house. He in his evidence stated that he knows the accused, Md. Hafijur Rahman. He stated that he knows Md. Abdul Hamed, whose house is situated nearby his house. According to his evidence, the occurrence had taken place about two years back. After three days from the date of occurrence, he came back to his house from the place of his work. Then, his sister, Musstt. Samla Khatun stated to him that

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her daughter victim X had been missing from the house since three days back. He searched for the victim X, but could not find her. After about seven days from the date of missing of the victim X, she returned back to the house. Then, the victim X stated to him that she had gone to the house of his younger sister at Gogamukh and stayed there. The victim X stated to him that the accused, Md. Hafijur Rahman had neither kidnapped her nor performed any sexual act with her.

This is the evidence adduced by PW.3, Md. Jiyabur Rahman. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

15. PW.4, Md. Mofizuddin in his evidence stated that he knows the informant, Md. Abdul Hamed, whose house is situated nearby his house. He in his evidence stated that he knows Musstt. Samla Khatun, whose house is situated nearby his house. He also stated that he knows the victim X, who is the daughter of Musstt. Samla Khatun. He in his evidence stated that the house of the accused, Md. Hafijur Rahman @ Habu Ali is situated nearby his house. According to his evidence, the occurrence had taken place about three years back. On the date of occurrence, he returned back to the house in the evening after his daily labour. Then, he came to know from the house of the victim X that the victim X had been missing from the house. After about one week, the victim X returned back to her house and then the victim X had stated to him that she had gone to the house of her aunt at Gogamukh. The victim X stated to him that the accused, Md. Hafijur Rahman had neither kidnapped her nor performed any sexual act with her.

This is the evidence adduced by PW.4, Md. Mofizuddin. There is no any incriminating material in his evidence against the accused person regarding commission of any offence.

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16. PW.5, Md. Abdul Sheikh in his evidence stated that he knows Md. Abdul Hamed, who is the informant of the case. He stated that he knows the victim X, who is the grand daughter of Md. Abdul Hamed. According to his evidence, Musstt. Samla Khatun is the mother of the victim X. The house of Musstt. Samla Khatun is situated about 100 metres away from his house. He also knows the accused, Md. Hafijur Rahman, whose house is situated in his own village. According to his evidence, the occurrence had taken place in the year, 2017. On the date of occurrence at about 4 pm, while he was catching fish in a streamlet namely Goriajan, which is situated nearby his house, then, he saw Musstt. Samla Khatun was going through the road. Then, Musstt. Samla Khatun stated to him that whether he had seen her daughter victim X as her daughter victim X had come out from the house after quarrelling with her as she rebuked her daughter victim X. He stated to Musstt. Samla Khatun that he had not seen her daughter victim X. He in his evidence stated that he did not know anything else regarding the occurrence of this case.

This is the evidence adduced by PW.5, Md. Abdul Sheikh. There is no any incriminating material in his evidence against the accused person regarding commission of any offence.

17. PW.6, Md. Safiqul Islam in his evidence stated that he knows Md. Abdul Hamed, whose house is situated nearby his house. He knows the victim X, who is the grand daughter of Abdul Hamed. The victim X has been staying with her mother, Musstt. Samla Khatun nearby the house of Abdul Hamed. He in his evidence stated that he knows the accused, Md. Hafijur Rahman @ Habu Ali, whose house is situated in his own village. According to his evidence, the occurrence had taken place in the year, 2017. At the time of occurrence, he was working in Arunachal Pradesh. After the occurrence, he came to his house and then, came to know from the village people that once, the victim X had been missing from her house and thereafter, she returned back to her house. He did not know where

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the victim X had gone from the house of her mother at the time of her missing. He stated that he did not know anything else regarding the occurrence of this case.

This is the evidence adduced by PW.6, Md. Safiqul Islam. There is no any incriminating material in his evidence against the accused person regarding commission of any offence.

18. 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 Section 366 IPC and under Section 8 of the POCSO Act brought against the accused, Md. Hafijur Rahman @ Habu Ali. The accused person deserves to be acquitted.

19. I, therefore, hold the accused, Md. Hafijur Rahman @ Habu Ali not guilty and acquit him from the charges under Section 366 IPC and under Section 8 of the POCSO Act. The accused person is set at his liberty forthwith.

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

21. Given under my hand and seal of this court on this the 11th day of December, 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.

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APPENDIX1. WITNESSES EXAMINED BY THE PROSECUTION SIDE :

PW.1 - Victim X.

PW.2 - Md. Abdul Hamed, the grand father of the victim X as well as informant of the case.

PW.3 - Md. Jiyabur Rahman.

PW.4 - Md. Mofizuddin.

PW.5 - Md. Abdul Sheikh.

PW.6 - Md. Safiqul Islam.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE :

Nil.

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

Nil.

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

Nil.

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