IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present :Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 23/2018 U/S 448 IPC R/W Section 08 of POCSO Act

State of Assam

-Vs-

Satyajit Das.....Accused.

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.
For the Accused : Mr. M.C. Narzary, Learned Advocate.

Date of Evidence : 05-01-19: 18-03-19: 28-06-19:

14-08-19: 02-09-19: 01-10-19.

Date of Argument : 16-11-2019.

Date of Judgment : 28-11-2019.

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 11-02-18, at about 02 pm accused Satyajit Das unlawfully entered into the dwelling house of the victim girl and tried to forcibly commit rape upon her. When she raised hue and cry the accused fled away. In connection with the incident on 16-02-18, the mother of the victim girl lodged an FIR with the Officer-in-Charge of Harisinga P.S.
- 2. On the basis of the FIR, Harisinga PS Case No. 11/18, under Section 448/376/511 IPC R/W Section 8 of POCSO Act was registered and after

completion of investigation Police submitted charge-sheet under Section 448 IPC R/W Section 8 of POCSO Act against the accused Satyajit Das.

- 3. Thereafter, the Hon'ble Special Judge vide Order dated 23-07-2018, transferred the case to this court for disposal.
- 4. In consideration of the submission of the learned counsel for both the parties and on evaluation of materials on record having found sufficient grounds for presuming that the accused person had committed offence U/S 448 I.P.C. R/W Section 8 of POCSO Act, charges were framed there under and the ingredients of charges U/S 448 I.P.C. R/W Section 8 of POCSO Act were read over and explained to the accused persons to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution in order to prove its case examined the following 09(nine) witnesses:

PW1- Smt. Bobita Bora.

PW2- Victim-A.

PW3- Durgeswar Kumar.

PW4- Babul Deka.

PW5- Utpal Deka.

PW6- Deba Kanta Medhi.

PW7- Jiraj Das.

PW8- Smt. Riju Rabha.

PW9- S.I. Powal Hazarika.

- The statement of the accused person had been recorded U/S 313 Cr.P.C.
 The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 7. Situated thus, the points for determination in the instant case are set up as follows:-

- (I) Whether the accused person committed house trespass into the dwelling house of informant Smti. Babita Bora?
- (II) Whether the accused person committed sexual assault upon Victim-A, aged about 16 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. M.C. Narzary.
- 9. Learned Addl. P.P. has submitted that the prosecution has adduced cogent, reliable and consistent evidence to bring home the charges leveled against the accused. The accused proposed to kiss her. The accused unlawfully entered into the house of the informant and committed sexual assault upon the victim. Hence, the accused is liable to be punished under Section 448 IPC R/W section 8 of POCSO Act.
- 10. Per contra learned defence counsel as argued that the informant of the instant case has not supported the prosecution case. She being the mother of the victim girl is vital and material witness of the case. The evidence of the victim girl is also not consistent. The other prosecution witnesses have not corroborated the evidence of the victim girl. Hence, prosecution has failed to prove the charges against the accused.
- 11. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidence adduced by the prosecution.
- 12. PW1 is Smt. Bobita Bora, informant and mother of the victim girl. In her evidence PW1 had deposed that in the month of February 2018, the occurrence took place. At the time of incident, the accused was constructing a culvert of their village road. In connection with theft of iron rod of

construction work, her cousin was arrested by the Police along with two others. In this connection the accused was assaulted by some youths of her village and he was taken to Harisinga PS. Thereafter, the boys called her to the PS and compelled her to file the FIR. At the time of filing of FIR, she did not talk with her daughter Jayamoni Bora. Ext-1 is the FIR and Ext-1(1) is the signature of PW1. In cross-examination, PW1 had stated that no incident as alleged in the FIR had taken place on the date of occurrence. She was compelled to file the FIR by the village youths. He had no allegation against the accused.

13. PW2 is victim-A. In her evidence PW2 had deposed that in the month of February 2018, the occurrence took place. On the date of occurrence, at about 2 pm, she was alone in the room of her house. Her mother was cooking food in the kitchen. At the time the accused Satyajit Das went inside the room where she was and proposed to kiss her. Then, she called her mother. The accused did not touch her body. She informed her mother about the incident and her mother scolded the accused. Thereafter, two youth of their village come to their house and assaulted the accused. Thereafter, Police came to their house and took the accused to the Police station. Later on, her mother lodged the FIR. PW2 was produced before the court by the Police and her statements had been recorded by the Magistrate U/S 164 Cr.P.C. Ext-2 is the statement and Ext-2(1) & Ext-2(2) are the signatures of PW2. In cross-examination, PW2 had stated that the Manager under whom the accused worked lodged an FIR against Rituraj Medhi, Jiraj Das, Utpal Deka and Girish Acharjya in connection with theft of iron rod. Rituraj Medhi is her cousin brother. When Rituraj Medhi, Jiraj Das, Utpal Deka and Girish Acharjya were arrested by the Police in connection with the theft case, the villagers asked her mother to file case against the accused Satyajit Das. The accused was working in her village for about one and a half months. She had no allegation against the accused. PW2 had denied the suggestion that on the date of occurrence the accused Satyajit Das went inside the room of their house and proposed to kiss her.

- 14. PW3 is Durgeswar Kumar. In his evidence PW3 had deposed that at the time of incident, he was in Guwahati. Later on, after coming home he had heard that one youth of the construction camp of his village went to the house of the informant and there an incident happened with daughter of the informant. In cross-examination, PW3 had stated that the Manger of the construction company of his village, where the accused used to work, lodged a criminal case alleging theft of rod against Utpal Deka and Jiras Das. That case was ended in compromise in court. In the said case he adduced evidence as witness. The incident of theft of rod occurred before the incident of instant case.
- 15. PW4 is Babul Deka. In his evidence PW4 had deposed about one year back, the occurrence took place. On the date of occurrence, on hearing hue and cry, he came to the place of occurrence while the youths were assaulting the accused. He came to know from others that the accused tried to kiss the victim girl at her home. Therefore some youths of village assaulted the accused. He informed the Police over phone. Later on, Police came and took the accused. He went to the Police station as he was the Secretary of VDP. Later on, the mother of the victim girl lodged the FIR. At the time of incident, the victim girl was appearing in HSLC examination. He did not ask her anything about the incident. In cross-examination, PW4 had stated that the incident of assault took place after four days of the incident that happened to the victim girl. He learnt about the incident on the date of assault of the accused by some youths. Prior to the filing of the FIR of instant case, a theft case was filed against Utpal Deka, Jiras Das, Ritumoni Medhi and Girish Acharjya by the Authority of Construction Company under whom the accused was working. The victim had love affairs with Uptal Deka who was the accused of the said theft case. He had no personal knowledge about the incident of this case. He had only heard about the incident from others.

- 16. PW5 is Utpal Deka. In his evidence PW5 had deposed that about one year back, the occurrence took place. On the date of occurrence, in the afternoon at about 4 pm, while he was going to shop he heard noises near the culvert of village road. Then, he went there and found gathering of people. He came to now from the people that the accused went to the house of the victim. Thereafter he left from there. He did not ask the informant and the victim about the incident. Cross-examination of PW5 had been declined by the defence.
- 17. PW6 is Deba Kanta Medhi. In his evidence PW6 had deposed that at the time of incident, accused was working in the company for construction of bridge of their village. On the date of occurrence, the accused told obscene words to the daughter of the informant. Then some village youths assaulted him. He had heard about the incident from his son Rituraj Medhi. In cross-examination, PW6 had stated that his house is adjacent to the house of the informant. Before the incident, the construction company filed a theft case against the elder brother of the victim and some other youths of the village. After the incident, the construction company shifted their camp from their village. PW6 had denied the suggestion that he had falsely stated that accused told obscene words to the victim as he is grandfather of the victim.
- 18. PW7 is Jiraj Das. In his evidence PW6 had deposed that in the year 2018, the occurrence took place. On the date of occurrence, in the evening, while he was at the chowk of their village, he had heard hue and cry near the camp of company of construction of bridge of their village. Then he went there and found gathering of a huge number of people. After sometime Police came and took the accused to the Police station. He had heard from the villagers that the accused teased victim-A. In cross-examination, PW6 had stated that he did not go near the place of occurrence. After five minutes of his arrival, Police came there and took the accused to the Police station.

- 19. PW8 is Smt. Riju Rabha. In her evidence PW8 had deposed that about one and a half years ago, the occurrence took place. On the date of occurrence, in the evening at about 6.30-7 pm, she came to know from her father Deba Kanta Medhi that on that day an altercation took place between the labourers of the company engaged in construction of bridge of their village in the house of one Kabita Deka. He did not know anything else. Crossexamination of PW8 had been declined by the defence.
- 20. PW9 is SI Powal Hazarika, Investigating Officer of this case. In his evidence PW9 had deposed that on 16-02-2018, he was posted as Officer In-charge of Harisinga PS. On that day on receiving a written FIR lodged by Bobita Borah, PW9 registered Harisinga PS Case No. 11/18 U/S 448/376/511 IPC R/W Section 8 of POCSO Act and took investigation of the case. In the Police station, PW9 recorded the statements of the informant Bobita Borah and witnesses U/S 161 Cr.P.C. Thereafter he proceeded to the place of occurrence, prepared the sketch map and recorded statements of other witnesses. PW9 produced the victim before the learned Magistrate for recording her statement U/S 164 Cr.P.C. PW9 also seized Xerox copy of admit card of the victim. He arrested the accused Satyajit Das and forwarded him to the learned Court. On completion of investigation, having found sufficient materials against the accused Satyajit Das, he submitted the charge-sheet U/S 448 IPC r/w section 8 of POCSO Act against the accused. Ext-3 is the sketch map of place of occurrence. Ext-3(1) is the signature of PW9. Ext-4 is the seizure list of seizure of Xerox copy of admit card of HSLC examination of the victim. Ext-4(1) is the signature of PW9. Ext-5 is the charge-sheet. Ext-5(1) is the signature of PW9. As per FIR the incident happened on 11-02-2018. The FIR was lodged on 16-02-2018. The house of Deba Kanta Medhi is near the place of occurrence. The houses of other persons are situated at a little distance. He did not seize any other document in connection with this case except the Xerox copy of admit card of the victim. Before filing of the FIR, no verbal information about the incident was given in the Police station.

21. On appraisement of the evidence on record it is appeared that PW1, the informant and mother of the victim girl has deposed nothing implicating the accused. She did not support the prosecution case at all. According to her she was compelled to file the case by some village youth when they were taken to police station on the allegation of assault by the accused. PW1 did not even talk with her daughter before lodging the FIR. The evidence of PW2, the victim girl is only to the effect that on the date of occurrence accused went to her house and proposed to kiss her and at that time her mother was cooking food in the kitchen. Then she told her mother about the incident. According to PW2 the accused did not touch her body. The evidence of the victim that the accused went to the house and proposed to kiss he was not corroborated by her mother. It is also appeared from the cross-examination of PW2 that she revealed that the Manager under whom the accused had been working at the relevant time lodged an FIR against her cousin and some other and when in connection with that case her cousin and three others were arrested by the police, the villagers asked her mother to file a case against the accused Satyajit Das. She had also revealed that she had no allegation against the accused. Thus there are material inconsistencies in the evidence of PW2 as to the actual reason for which the FIR had been filed by her mother. Moreover, her evidence about the incident is not corroborated by her mother. As such reasonable doubt arises as to the truthfulness of her evidence. The evidence of other prosecution witnesses is also not consistent. PW3 has failed to specifically state about the incident that happened between the accused and the daughter of the informant. Though PW4 had deposed that he came to know from others that the accused tried to kiss the victim girl at her home but he did not hear anything from the victim about the incident. In crossexamination, PW4 had also revealed that the case was filed after filing of a theft case against Utpal Deka, Jiras Das, Ritumoni Medhi and Girish Acharjya by the authority of Construction Company under whom the accused was working. According to PW4 the victim had love affairs with

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Utpal Deka who was the accused of the theft case. The evidence of PW5,

PW6 and PW7 would also not come in aid to the prosecution case inasmuch

as their evidence do not disclose any incident of sexual assault upon the

victim girl.

22. In view of above discussion it appears that the prosecution has failed to

establish the charge under Section 448 IPC R/W Section 8 of POCSO Act

against the accused person beyond all reasonable doubt.

23. Situated thus the points for determination are decided in the negative and

against the prosecution.

<u>ORDER</u>

24. In the result, the accused Satyajit Das is found not guilty under Section 448

IPC R/W Section 8 of POCSO Act and acquitted of charge under Section 448

IPC R/W Section 8 of POCSO Act beyond all reasonable doubt and set at

liberty forthwith.

25. Bail bond executed by the accused Satyajit Das and the surety shall remain

in force for another six months under the purview of provision under section

437-A Cr.P.C.

26. Judgment is signed, delivered and pronounced in the open court today the

28th day of November, 2019.

Dictated and Corrected

(N. Talukdar)

Addl. Sessions Judge

Udalguri

(N. Talukdar)

Addl. Sessions Judge

Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::::::::UDALGURI.

Special (POCSO) 23/18 APPENDIX

(A) Prosecution Exhibits :

Ext.-1: FIR.

Ext.-2: Statement of victim U/S 164 Cr.P.C.

Ext.-3: Sketch map.

Ext.-4: Seizure list.

Ext.-5: Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Smt. Bobita Bora.

PW2- Victim-A.

PW3- Durgeswar Kumar.

PW4- Babul Deka.

PW5- Utpal Deka.

PW6- Deba Kanta Medhi.

PW7- Jiraj Das.

PW8- Smt. Riju Rabha.

PW9- S.I. Powal Hazarika.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N. Talukdar)
Addl. Sessions Judge.

Udalguri.