IN THE COURT OF THE SESSIONS JUDGE: : KAMRUP: : AMINGAON

District: Kamrup, Amingaon

Present: A.F.A. Bora

Sessions Judge, Kamrup, Amingaon

Special Sessions (POCSO) Case No. 8/2014

State of Assam

-Versus-

Md. Habibur Ali

S/o- Late Nuruddin

Vill- Sukfatari

P.S- Boko

Dist- Kamrup, AssamAccused

Appearance:

Smt. P. Deka, Public Prosecutor

- For the State

Mr. A. Ali Akand,

- Advocate for the accused.

Date of recording evidence: 02.07.2015 and 17.01.2018

Date of Argument : 15.05.2018

Date of Judgment : 15.05.2018

J U D G M E N T

- 1) The facts of the case as revealed from the FIR that on 20.06.2014, one Must. Tajbhan Bibi, wife of Md. Kaijuddin, lodged an FIR at Boko police station. The allegations brought against the accused Md. Habibur Ali is that on 19.06.2014 at about 08:00 AM in the morning, taking advantage of the absence of any family members, committed rape upon the grand-daughter of the informant, Must. Taklima Begum. According to her, on receiving the information from one Must. Mosheron Bibi, the present informant lodged the FIR.
- 2) Accordingly, the FIR was registered vide Boko P.S. case no. 382/14 u/s 376 read with Section 8 of the POCSO Act, 2012.
- 3) Police investigated into the matter, the victim was medically examined, the statement of the victim was recorded u/s 161 Cr.P.C and on completion of investigation submitted chargesheet against the accused Md. Habibur Ali u/s 376 read with Section 8 of the POCSO Act, 2012.
- 4) On receiving the record by this court and after hearing both the parties, this court have framed charge u/s 4 of the Act and charge was read over and explained to the accused to which he pleaded not guilty.
- 5) At the trial, the prosecution side examined 2 witnesses and declined to proceed further. After completion of prosecution evidence, the accused person was examined u/s 313 Cr.P.C who claimed the incident as a concocted story made out against him.

6) **POINT FOR DETERMINATION**

(i) Whether on 19.06.2014 at about 08:00 M at Baruagaon Pahartal, the accused person committed penetrative sexual assault on Must. Taklima Begum, who at the relevant time was above 12 years and below 14 years of age, by penetrating his male organ into her private part and thereby committed an offence U/S 3, punishable u/s 4 of the POCSO Act, 12?

DISCUSSION AND REASONS THEREOF:

- 7) Perused the case record. Heard both sides.
- 8) Now to arrive at a decision in the matter, I have accordingly examined the testimony of the prosecutrix. According to her, the informant is her grandmother. She deposed in her evidence that on the date of the incident, accused asked her a glass of water and she gave it to him. This witness was declared hostile by the prosecution putting suggestion that her father asked her to remove her pant and inserted his genital into her genital. But the prosecutrix straightway denied the same.
- 9) Again during the cross-examination by the defence, it is admitted by the prosecutrix that she is staying in the house of the accused and her grandmother took her forcibly to the police station along with the villagers. She further admitted during her crossexamination that under the instruction of the villagers, her grandmother lodged this case. According to her, accused Md. Habibur Ali had not committed any rape upon her.
- 10) With the above evidence of prosecutrix, prosecution examined Sri Rebo Medhi, ASI of police, who deposed that on the basis of the GD entry no. 287/14 dated 20.06.2014, he went to the place of

occurrence along with the Investigating Officer and found the accused detained by the public at the place of occurrence for allegedly committing rape upon the prosecutrix. He is a formal official witness and he deposed that victim was produced before the Magistrate for recording her statement and she was also medically examined. He testified Exhibit 1 as the FIR. Exhibit 2 as the printed form of FIR, Exhibit 3 as the Sketch map, Exhibit 4 as the forwarding of the Medical Report, Exhibit 5 as the GD entry, Exhibit 6 as the charge-sheet and according to him, Exhibit 7 is the statement of the victim recorded u/s 161 CR.P.C. and Exhibit 7 (1) is his signature.

- 11) During cross-examination by the defence, PW-2 admitted that accused was detained by the public and had received injuries on his person and he denied the suggestions put to him that out of public pressure, a case was made out without any voluntary statement of the victim.
- 12) In the above situation, it is not a case of the prosecution that the victim suffered from sexual penetrative assault committed by the accused. The statement of the prosecutrix has further made it clear that she and her grandmother were compelled by the villagers to lodge this case against the accused person. Whatever the statement recorded by the I/O is there with the record, it will have no evidentiary value in the absence of any incriminating materials brought against the accused by the victim. According to the prosecutrix, she offered a glass of water to the accused and there is no single word whispered by the victim in committing any penetrative sexual assault under the provision of Section 3 (a), (b), (c) and (d) of the POCSO act, 2012. The medical evidence available on record is suggestive of the fact that the victim was below 14 years and there is no evidence of recent

sexual intercourse. The evidence of PW-2 is formal in nature which will no way help the prosecution to establish any case against the accused person for committing offence u/s 4 of the

POCSO Act.

13) In the result, it is held that the prosecution has failed to prove this case against the accused. Accordingly, the accused Md. Habibur Ali is acquitted of the offence and set at liberty

forthwith.

14) The bail bond already executed on behalf of the accused shall remain in force for a period of next six months in compliance u/s

437 (A) of Cr.P.C.

15) Seized articles, if any, shall be disposed of.

16) A copy of the judgment be sent to the District Magistrate,

Kamrup Amingaon u/s 365 Cr.P.C.

Given under my hand and seal of this Court on this 15^{th} day of

May, 2018.

Sessions Judge, Kamrup Amingaon

Dictated and corrected by me

Sessions Judge Kamrup, Amingaon

Appendix

Prosecution witnesses

P.W.1 : Prosecutrix

P.W.2 : Sri Rebo Medhi

PROSECUTION EXHIBITS

Ext. 1 : FIR

Ext. 2 : Printed form of FIR

Ext.3 : Sketch map

Ext. 4 : Forwarding of Medical Report

Ext. 5 : GD entry

Ext. 6 : Charge sheet

Ext. 7 : Statement of PW-1 u/s 161 Cr.P.C

Sessions Judge Kamrup Amingaon