IN THE COURT OF SPECIAL JUDGE :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 36 of 2015, U/S 8 of POCSO Act 2012 (Arising out of Bokota Nemuguri P.S. Case No. 56/2015)

State of Assam

-Vs-

Sri Josiya Tanti Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Sachin Saikia, Advocate

Date of framing Charge : 08.01.2016

Dates of Evidence : 01.07.2016, 08.02.2017, 27.03.2017,

12.09.2017

 Date of S/D
 :
 02.11.2017

 Date of Argument
 :
 18.05.2018

 Date of Judgment
 :
 31.05.2018

<u>JUDGMENT</u>

Prosecution case, in brief, is that on 06.11.2015, informant Sri Ranjit Dey lodged an FIR with O/C, Bokota Nemuguri P.S. alleging, inter alia, that on 01.11.2015, while he went to Sepon market, his neighbour Sri Josiya Tanti came to his residence with his wife for stay for the night. On his returning home at 10.00 p.m., he saw his elder daughter victim 'M' (name withheld) was weeping and on asking, victim told him that accused committed misdeed on her. On asking the accused about the incident, without telling anything, he left the house.

- 2. On receipt of the FIR, Bokota Nemuguri P.S. Case No. 56/2015, U/S 4 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody. Upon completion of investigation, charge sheet was submitted against the accused for trial u/s 8 of Pocso Act.
- 3. Upon furnishing copy and after hearing both the sides, vide order dated 08.01.2016, the then learned presiding officer has framed charge U/S 8 of POCSO Act, 2012 against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined eight witnesses including the M.O. and I.O.
- 4. On completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.
- 5. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. Sachin Saikia, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 6. (i) What was the age of the victim on the date of incident?
 - (ii) Whether on 01.11.2015, accused committed sexual assault on the victim M?

DECISION AND REASONS THEREOF:

7. PW - 1 the victim M in her evidence deposed that she was aged about 9 (nine) years and a student of Class-III. Accused is known to her being a neighbour who used to visit her residence. One day, after coming to her house for stay, accused opened her pant and gagged her mouth. She informed the matter to her father who in turn informed the incident to police. Police took her to Doctor and also took her to Court where she gave her statement. In her

cross, she deposed that at her residence there was one room. Her father sleeps in one bed and she along with her younger sister used to sleep in another bed. Her brother used to sleep on the ground. On the day of incident, her brother was sleeping on the ground and she along with her younger sister were sleeping on the bed. On that day of the incident, accused came to her residence with his wife and child and slept in another room of the house. There was a door between the two rooms and only after opening the door, one can enter into their room. She denied to have deposed falsely.

- 8. PW-2 Sri Ranjit Dey, father of the victim in his evidence deposed that on the day of incident accused came to his residence with his wife for stay for the night. On his returning home at 10 PM, his daughter Mainee told him that accused has committed misdeed with her. On this, accused and his wife left his house. He informed the matter to Gaonburah and VDP and thereafter lodged the FIR vide Exbt. 1. In his cross examination, he admitted that he informed the matter to Gaonburah and VDP on the next day. FIR was lodged after five days. The accused and his wife were staying in his house since last 15 days in a different room. He denied defence suggestion that the accused with his wife used to reside on the other part of their quarter and to evict him from the same, he filed this false case.
- 9. PW-3 Sri Nakul Tanti in his evidence deposed that at the time of incident, victim M was aged about 10 to 11 years. He further deposed that on one Monday, he was reported by Meena Dey and her sister that accused Jusoya Tanti committed misdeed with victim M while she was sleeping. On this, he informed the matter to police. In his cross examination, he denied that while giving statement to police, he has not stated regarding getting information from Rina and Meena, sister of Ranjit Dey.
- 10. PW 4 Dr. Pranab Kumar Dutta in his evidence deposed that on 06.11.2015, he examined the victim M in connection with Bokota Nemuguri P.S. Case No. 56/2015 and upon examination, he is of the opinion that the victim

was aged above 8 years but below 12 years and there was no sign of assault or sexual intercourse in her person. He proved his report as Exbt.2.

- 11. PW-5 Sri Atu Sarma in his evidence deposed that he has no personal knowledge of any incident with victim. From villagers, he came to know that accused has committed rape on victim M. He has not asked the victim about the incident.
- 12. PW-6 Sri Sanjay Tanti in his evidence deposed that on the day of incident, while he went to the residence of his brother near to the accused, he saw that informant Ranjit Dey was physically assaulting the accused. On this, he restrained him and rescued the accused. He has not asked Ranjit as to why he has assaulting the accused. Subsequently from villagers, he came to know that accused has committed misdeed on victim M. In his cross examination he stated that he has no personal knowledge of any incident with victim M. He has not asked the victim about the incident.
- 13. PW-7 Smt. Meena Dey in her evidence deposed that on the next day of incident, while she went to the residence of victim, she saw her weeping. On asking, victim M told her that on the previous night while she was sleeping, accused Jasuya ride on her body and committed misdeed on her. She also told her that accused gagged her mouth. On knowing this, she asked Ranjit who in turn told her that he has not informed the matter to others. On this, she informed the matter to VDP and Ranjit went to Gaonburah. On the next day, she along with Ranjit Dey went to PS and Ranjit lodged the FIR. In her cross examination she stated that informant Rajit Dey is her brother. She denied that while giving statement to police she has not stated that "On the next day of incident, while she went to the residence of victim, she saw her weeping. On asking, victim M told her that on the previous night while she was sleeping, accused Jasuya ride on her body and committed misdeed on her, that she also told her that accused gagged her mouth, that she informed the matter to VDP and Ranjit went to Gaonburah and that she along with Ranjit Dey went to PS

and Ranjit lodged the FIR." She denied that victim did not tell her anything about the incident. She denied that she is deposing falsely. Ranjit has three daughters and one son. Son is aged about 12 years.

14. PW-8 SI Parth Pratim Singkon in his evidence deposed that on 06.11.2015, he received one written FIR from Sri Ranjit Dey. During investigation, victim was sent for medical examination and also sent to Court for recording her statement u/s 164 Cr.P.C. On the same day, he went to the place of occurrence i.e. residence of informant and drawn a sketch map of the place of occurrence vide Exbt. 3. He apprehended the FIR named accused Sri Jasoya Tanti on 27.11.2015. During investigation, he has collected the medical report and statement given by victim in Court. Exbt. 4 is the statement of the victim given in Court. On completion of investigation, he has submitted charge sheet against the accused u/s 12 of POCSO Act. Exbt. 5 is the charge sheet. In his cross examination, PW 8 deposed that though the victim in her 164 Cr.P.C. statement has stated about presence of her elder brother in the room, he has not examined the said brother as witness. He has not collected any age proof document of the victim. While giving statement to police, witness Meena Dey has not stated that "On the next day of incident, while she went to the residence of victim, she saw her weeping. On asking, victim M told her that on the previous night while she was sleeping, accused Jasuya ride on her body and committed misdeed on her, that she also told her that accused gagged her mouth, that she informed the matter to VDP and Ranjit went to Gaonburah and that she along with Ranjit Dey went to PS and Ranjit lodged the FIR." Witness Nakul Tanti in his statement did not state before him that Meena Dev and her sister has informed him about the incident of misdeed by accused. He stated before him that Ranjit Dey has informed the matter to him. As per FIR the incident took place on 01.11.2015 and the FIR was received on 06.11.2015. No explanation was given in the FIR as to cause of delay. He denied that he has not investigated the case properly.

15. <u>Point No. I:</u> So far age of the victim is concerned, while adducing Spl (P) Case No. 36/2015 Page 5 of 8

evidence on 01.07.2016, the victim claimed her age as 9 (nine) years. P.W. 5 has stated that on the date of incident, victim was aged about 10-11 years. P.W.4, the M.O. in his evidence stated that upon examination he is of the opinion that victim was aged above 8 (eight) years but below 12 years of age. The I.O. (P.W.8) in his cross examination admitted that during investigation he has not collected any document regarding age of the victim. The above evidence on age of the victim as stated by the victim got due support from the evidence of M.O. Defence has not challenged the age during cross examination of the victim or other witnesses. As such, it can safely be held that on the date of alleged occurrence, the victim was aged about 9 (nine) years.

16. So far charge of sexual assault is concerned, from Point No. II: the evidence of PW 1, the victim it appears that on the date of incident accused came to her house, gagged her mouth and opened her pant. However in her cross examination she admitted that she used to sleep in the room with her sister on a bed and her brother was sleeping on the floor. At the time of incident, accused was sleeping in a different room with his wife and children. There was a door between the two rooms which was closed from inside and only on opening of the said door, one can enter into her room. P.W. 2 also deposed that on returning home, victim reported him about committing misdeed by the accused. P.W. 2 did not detail as to how the misdeed was committed. In his cross, he admitted that FIR was lodged after five days. Accused along with his wife was in his house for last 15 days and used to sleep in different room. He denied the defence suggestion that accused used to reside in the separate part of the quarter and for evicting him he filed this false case. From the evidence of P.W. 3 it appears that he is a hearsay witness and one Meena Dey and her sister reported him about the incident of misdeed by the accused while victim was sleeping. P.W. 4, the M.O. did not find any mark of injury. P.W. 5 and P.W. 6 are also hearsay witnesses who did not even inquire about the incident from the victim. P.W. 7, the sister of the informant in her evidence exaggerated the fact by saying that while victim was sleeping,

accused ride on her body and committed misdeed on her. Though she denied in her cross examination to have not made such statement before police, but the I.O. (P.W.8) has confirmed. Thus, from the above, it appears that the victim has simply stated regarding gagging of her mouth and attempt to open her pant by the accused. But from her cross examination it reveals that she used to sleep in the room with her sister and brother and by locking the door from inside, as such there is no possibility of entering the said room without opening the door. No allegation was brought against the accused that he forcibly entered the house by breaking the door. The evidence of the victim did not get any corroboration. Moreover lodging of the FIR after five days creates sufficient doubt about the genuineness of the alleged incident more particluerly when fact of residing of the accused on the part of the house for 15 days was suppressed in the FIR. Prosecution has failed to bring the sister and brother of the victim to show that any such incident in fact happened. In view of inherent contradictions amongst the prosecution witnesses, I am of the opinion that presumption U/S 29 of POCSO Act 2012 cannot be invoked in this case.

- 17. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of offence U/S 8 of POCSO Act against the accused Sri Josiya Tanti. As such, accused Sri Josiya Tanti is acquitted from the charges U/S 8 of POCSO Act, 2012 and set at liberty forthwith.
- 18. Bail bond executed by the accused and his surety stand extended for another six months from today U/S 437-A Cr.P.C.
- 19. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 (A) Cr.P.C.
- 20. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 21. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, $31^{\rm st}$ day of May 2018 Sivasagar.

Special Judge Sivasagar

APPENDIX

- 1. Prosecution witnesses:
 - P.W.1 (Victim 'M')
 - P.W.2 Sri Ranjit Dey (Informant)
 - P.W.3 Sri Nakul Tanti
 - P.W.4 Dr. Pranab Kr. Dutta (M.O.)
 - P.W.5 Sri Atu Sarma
 - P.W.6 Sri Sanjay Tanti
 - P.W.7 Smt. Meena Dey
 - P.W.8 SI Partha Pratim Singkon (I.O.)
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Medical examination report
 - Exbt.3 Sketch map
 - Exbt.4 164 Cr.P.C. statement of the victim 'M'
 - Exbt.5 Charge-Sheet

Special Judge, Sivasagar: