## IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.28/2018 (U/S: 4 of POCSO Act)

State
Versus
Maso Munda,
S/O Late Tipro Munda,
Vill- Dimakuchi TE (Line No.24),
PS-Dimakuchi, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

## **APPERANCE:**

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri M.C. Narzary, Advocate.

Evidence recorded on: 4.1.2019.

Argument heard on: 1.4.2019.

Judgment delivered on: 1.4.2019.

## **JUDGMENT**

1. The prosecution case, in short, is that on 10.2.2018 the informant Smti. Sabitri Koya lodged an FIR with the Officer-in-charge of Dimakuchi PS alleging, inter-alia, that on 4.2.2018 religious ceremony was in the house of her brother-in-law where her victim daughter (real name is withheld, henceforth referred as the victim) was present. On 8.2.2018 her daughter informed her in the morning at about 6 AM that on the intervening night of 4.2.2018 and 5.2.2018 at around 1 AM the accused persons Pritam Sabor and Maso Munda induced her to go to the mini tea garden of Nilu Dey and at around 3 AM both the accused persons committed rape on her inside the tea estate and on the same day at around 5 AM the accused persons left her in front the gate of their house.

- 2. On the basis of the FIR police registered a case vide Dimakuchi P.S. case No.12/2018 U/S 4 of POCSO Act and investigated to it. On conclusion of investigation police laid the charge-sheet against the accused persons namely, Pritam Sabor and Mosa Munda U/S 4 of POCSO Act showing accused Pritam Sabor as juvenile.
- 3. On receipt of the charge sheet with all relevant documents Special (POCSO) case No. 28/2018 was registered. Since the accused Pritam Sabor was juvenile conflict with law and, as such, his case was made over to Juvenile Justice Board for enquiry and trial. The accused Mosa Munda was furnished with the copies of documents supplied U/S 173 Cr.P.C.
- 4. In consideration of framing of charge having heard learned counsel of both sides and upon perusal of the materials on record a prima-facie case U/S 4 of POCSO Act was made out to frame charge against the accused. Accordingly formal charge under the aforesaid section of law was was framed against the accused and the same on being read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
- 5. At the trial the prosecution has examined seven witnesses including the informant, victim, M.O and I.O. of the case and also relied on certain documents mark as exhibits.
- 6. After closure of the prosecution case it was found that there were no incriminating materials in the evidence on record to put before the accused for seeking his reply and, hence, examination of the accused U/S 313 Cr.P.C. is dispensed with.
- 7. In the light of the above perspective, the point for determination in the present case is set up and framed as:-
- (i) Whether the accused on 5.2.2018 at about 1 AM in the small tea garden of Nilu Dey at Dimakuchi under Dimakuchi PS committed penetrative

sexual assault upon the victim, aged 13 years as alleged under Section 4 of POCSO Act?

8. I have heard arguments advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

## DISCUSSION, DECISION AND REASONS THEREOF:

- 9. PW1, Dr. Surjya karmakar is the medical officer who examined the victim in connection with this case on 10-02-18. As per his opinion the approximate age of the victim is 12-14 years. However, the patient did not give consent for vaginal examination. He has proved his medical report as Ext. 1 wherein Ext. 1(1) is his signature.
- 10. PW2, Sabitri Koya is the informant of this case. Despite being the first informant this witness has totally disgraced from the material particulars of the case which is not inconformity with the first information report marked as Ext.2. Her evidence discloses in contradiction to the FIR Ext.2 to the fact that on the day of occurrence in the evening her daughter went to attend marriage ceremony of one Sanjib Koya without informing her. On the next day in the morning two boys brought her daughter to her home. As her daughter was not found at home at night so she suspected that the accused who came to my house to her house along with her daughter might have molested her. She has stated that her daughter on being asked only told her that the accused and the other boy did not molest her when she was present at the house of Sanjib Koya due to marriage ceremony. In cross-examination she has also empathically stated that she lodged the FIR against the accused merely on suspicion as he came to her house along with her daughter to keep her in her house when the marriage ceremony was over.
- 11. Now coming to the testimony of the victim (PW3), it also transpires from her evidence that she has also failed to support the broad substratum of the prosecution case. She has merely stated that her mother lodged the FIR with the police against the accused suspecting that the accused might have

committed rape on her when she was attending the house of her uncle Sanjib Koya on the occasion of marriage ceremony. Her mother lodged the FIR as because she remained in the marriage house for the night without informing her mother. After the incident police sent her for medical examination. Her statement U/S 164 CrPC was recorded vide Ext. 3 wherein Ext. 3(1) is her signature. In cross-examination she has reiterated that the accused did not commit rape on her on the day of occurrence. She gave her statement under duress as tutored by her relatives and mother only to falsely implicate the accused.

- 12. Now coming to the testimony of PW4 and PW5 it appears point blank that they were not the ocular witnesses and their evidence does not display any implicating evidence to support the charge levelled against the accused.
- 13. Lastly, there remains the testimony of PW6 and PW7, who are the investigating officers of the case. Their evidence is merely formal one so far as the investigation of the case was concerned. In spite of appraisal of their evidence, I find no incriminating evidence in their testimony to lend assurance to the prosecution case when the evidence of the victim (PW3) is discrepant and inconsistent to the court of the material particulars of the case.
- 14. On consideration of the above discussed evidence on record, it is amply evident that there is no iota of implicating evidence on record to prove the guilt of the accused. Both the vital witnesses, the informant (PW2) and the victim (PW3) have failed to deliver consistent and cogent evidence as regards commission of rape inasmuch as the victim herself totally turned around from the material particulars of the case. The testimony of the victim (PW3) is also not at all consistent with her statement recorded U/S 164 Cr.P.C. Though the victim implicated the accused in her statement U/S 164 Cr.P.C. but she has totally resiled from such statement in her evidence by merely disclosing that the accused did not commit rape on her. Since statement of the victim U/S 164 Cr.P.C. is not a substantive evidence without corroboration from her oral account and, as such, in absence of implicating evidence in the testimony of

the victim and other witnesses such statement cannot be accepted to bring home the charge levelled against the accused.

- 15. Having found no legally admissible evidence on record from any of the witnesses, as such, I cannot help saying that the prosecution has failed to prove its case.
- 16. In the result, I am constrained to hold that the accused Maso Munda is not guilty U/S 4 of POCSO Act. Therefore, he is acquitted thereunder on and set him at liberty forthwith.
- Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 1st day of April,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.