IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.5/2018 (U/S :8 of POCSO Act)

State
Versus
Sri Nagen Kumar
S/O Late Pani Ram Kumar
Vill- Fulkuchi,
PS-Panery, 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 : Mr. R. Khaklary, Advocate.

Evidence recorded on :5.10.18, 17.11.18.

Argument heard on: 17.11.2018.

Judgment delivered on: 17.11.2018.

JUDGMENT

The prosecution case in a narrow compass is that on 12.12.17, the informant Padam Puri lodged an FIR with the Officer-In-Charge, Panery PS stating, inter-alia, that on 6.12.17 his minor daughter (real name is withheld, henceforth referred to as the victim) went to attend her school. On that day after taking photograph of a farewell meeting at around 3.30 PM the accused Nagen Kumar, teacher of that school also snapped one photo with his victim daughter together. On the next day i.e. on 7.12.17 the accused at around 12 0'clock in the noon called his victim daughter to computer class room where he kissed his daughter. Again on 8.12.17 at 12 0'clock in the noon while his victim

daughter was coming to appear in the examination through the school field at that time accused again kissed her and after abusing her with filthy words told her that he would help her to secure good marks in the examination.

- 2. On the basis of the FIR police registered a case vide Panery P.S. case No.159/17 U/S 8 of POCSO Act R/W Section 294 IPC and commenced the investigation of the case. On completion of the investigation the I.O. laid a report U/S 173 Cr.P.C. for the offence U/S 8 of POCSO Act appears to have been committed by the accused Nagen Kumar.
- 3. On due appearance of the accused, he was furnished with the copies of the documents U/S 173 Cr.P.C.
- 4. Whereupon, having heard learned counsel of both sides and upon scrutiny of the materials in the case record, a prima-facie case was made out to frame charge against the accused Nagen Kumar U/S 8 of POCSO Act. Hence, formal charge punishable under the aforesaid section of law 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. In order to substantiate the case, the prosecution examined as many as four witnesses including the informant, victim, M.O and I.O. of the case. That apart the prosecution also tendered some documents marked as exhibit in support of its case.
- 6. The examination of accused U/S 313 Cr.P.C. was dispensed with due to lack of incriminating materials in the evidence for seeking reply from him.
- 7. Situated thus, the sole point for determination in the present case is set up and framed as:

Whether the accused on or about 7.12.17 at about 3 PM at Phulkuchi Middle English School under Panery PS committed sexual assault upon the victim, aged about 13 years as alleged U/S 8 of POCSO Act?

8. I have heard argument tendered by the learned counsel of both the sides and also assailed the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

- 9. PW1 Padum Puri is the first informant of the case. In spite of being the first informant of the case he had totally back tracked from the basic version of the FIR marked by him as Ext.1. In contradiction to the FIR, Ext.1 he has stated to the effact that on the day of occurrence his daughter after returning from school informed her mother that the accused who was her class teacher misbehaved with her. But he has not stated by what manner the accused misbehaved with his daughter in the class.
- 10. In cross-examination he has revealed that he lodged the FIR due to persuasion of other school teachers though he had no intention to lodge such FIR before the police. Moreover, the FIR which was scribed by another person did not read over to him after its writing and he put his signature as per the direction of the scribe of the FIR.
- 11. Now, coming to the testimony of the victim it appears at the outset that he evidence does not have any semblance of truth as regard the broad spectrarum of the prosecution case. In spite of being the victim she has also resiled from the material particulars of the case depicting different story, as a result her evidence is found to be not at all inspiring to bring home the guilt of the accused. She has stated that on the day of occurrence when school class was over she showed the practical book to the accused who was her class teacher. Then the accused immediately scolded her showing practical book at that time and as a result she became very upset and returned home and also

narrated about the incident to her mother. In this regard she also consulted with some other teachers who asked to lodge an FIR with the police. Accordingly her father lodged the FIR with the police. She has marked her statement U/S 164 Cr.P.C. recorded before the Magistrate as Ext.2, wherein Ext.2(1) and 2(2) are her signatures.

- 12. On perusal of Ext.2, it appears that her statement does not commensurate at all with her evidence though she has brought incriminating statement against the accused therein. Her statement U/S 164 Cr.P.C. not being the substantive evidence and complete lack of corroboration in that regard from her own evidence it cannot be accepted as substantive evidence to prove the charge against the accused. She has rather empathically stated that accused did not misbehave with her on the day of occurrence. She felt insulted when the accused refused to go through her practical book. She has further divulged that the accused used to scold her in class whenever she used to laugh and talk with others in class. Except this nothing happened with the accused in the material time. She has further revealed that she gave her statement U/S 164 Cr.P.C. as tutored by other persons. On close scrutiny of the oral account of the victim (PW2), it is manifest that her evidence is full of inconsistence and infirmities which does not support the prosecution case at all. When the victim has adduced no modicum of implicating evidence to support the ingredient of charge against the accused and therefore, her evidence is discarded.
- 13. What remains now is the testimony of PW3, Dr. S.S. Yadav, who is the Medical and Health Officer of the case and PW4, Sohrab Ali is the I.O. of the case. The evidence of PW3 (M.O.) has no significance in support of the prosecution case as though victim was produced for examination before him he found no external injury in the body of the victim and she also refused to undergo further medical examination. This is also what has been found on perusal of the Ext.3, the medical report.

14. Lastly, the evidence of the I.O. (PW4) also does not help the prosecution case to sustain the charge levelled against the accused in as much as the I.O. (PW4) after as usual formal completion of investigation of the case

laid the charge-sheet against the accused, vide Ext.5.

15. Moreover, there is also another dent in the prosecution case as regards

the delay in lodging the FIR after five days of the incident and the reason of

delay has not been explained satisfactorily by the informant which has created

doubt as to the veracity of the prosecution case in the back drop of the

discrepancy, inconsistency and unreliability in the testimony of the informant

(PW1) and the victim (PW2). Hence the prosecution case has remained to be

proved and therefore, the accused is entitled to acquittal.

16. In the result, I am constrained to hold that the accused Nagen Kumar is

not guilty U/S 8 of the POCSO Act. Therefore, he is acquitted thereunder 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.

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Given under my hand and seal of this Court this 17th day of

November, 2018.

Dictated and corrected by me and

each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Padum Puri ii)PW2 Dibya Puri iii)PW3 Dr. S.S. Yadav iv)PW4 Sohrab Ali B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 FIR

ii)Ext.2 Statement of victim U/S 164 Cr.P.C.

iii)Ext.3 Medical report iv)Ext.4 Seizure list. v) Ext.5 Charge-sheet.

Dictated and corrected by me.

Special Judge, Udalguri