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

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

Special (POCSO) 10/2017 Under Section 6 of POCSO Act

State of Assam

-Vs-

- 1. Fungja Brahma
- 2. Ekaram Daimari.....Accused persons.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused : Mr. M.C. Narzary & Mr. Tarun Ch. Boro, Learned

Advocates.

Date of Evidence : 05-12-18: 26-03-19: 29-04-19: 10-05-19.

Date of Argument : 01-06-19. Date of Judgment : 04-06-19.

JUDGMENT

1. The prosecution case in brief is that on 29-03-16, the informant Khala Basumatary lodged an FIR with the Officer-in-Charge of Rowta P.S. alleging that on 26-03-16, at about 06.00 pm, accused Fungja Brahma took informant's fifteen years old minor daughter forcibly to see 'Doul Puja' at Aithanjhar. After enjoying the celebration of puja, at about 12.30 am in the night, accused Fungja Brahma alongwith accused Ekaram Daimary took the daughter of the informant to an unknown jungle and committed rape

upon her and threatened her not to divulge about the incident to anyone else. Next day morning, they took the victim to the house of her maternal uncle and keeping her there they fled away.

- On the basis of the FIR, Rowta PS Case No. 42/16, under Section 6 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 6 of POCSO Act against the accused persons Fungja Brahma and Ekaram Daimari.
- 3. In consideration of the submission of the learned counsels for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offence under Section 6 of POCSO Act, Learned Special Judge, Udalguri framed charge there under and the ingredients of charge under Section 6 of POCSO Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The learned Sessions Judge vide Order dated 01-06-19, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following six (6) witnesses.

PW1- Bilad Daimary.

PW2-Dr. Bhagirath Dey.

PW3- Khala Basumatary.

PW4- Victim-A.

PW5- S.I. Dipankar Gogoi.

PW6- Inspector Dilip Mili.

5. The statement of the accused persons had been recorded U/S 313 Cr.P.C. The defence pleas were of total denial. Defence had declined to adduce evidence.

- 6. Situated thus, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused persons committed aggravated penetrative sexual assault upon Victim-A who is a minor girl aged about 15 years, and thereby committed an offence punishable under Section 6 of POCSO Act?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsels Mr. M.C. Narzary and Mr. Tarun Ch. Boro. Learned defence counsels have argued that the ingredients of Section 6 of POCSO Act have not been established in the present case against the accused persons.
- 8. 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 counsels, I would like to discuss the evidences adduced by the prosecution.
- 9. PW1 is Bilad Daimary. In his evidence PW1 had deposed that he did not know the accused persons. The occurrence took place about two years ago. He was not present at the time of occurrence. On the next day he heard that one girl was raped by a person. Cross-examination of PW1 had been declined by the defence.
- 10. PW2, Dr. Bhagirath Dey is the Medical Officer who examined the victim. In his evidence he had deposed that on 30-03-2016, he examined the victim at Udalguri Civil Hospital and on examination he found the following:

 Urine for pregnancy (BHCG) test: (+)ve (Positive)

 Ultrasonography of Abdomen reported as: Single live embryo of 9 weeks gestational age.

In his opinion sexual intercourse has taken place, no sign of violence seen in body and in private parts and approximate age is 16-17 years. Ext. 1 is the medical examination report wherein Ext. 1(1) is the signature of PW2. In cross-examination PW2 had deposed that at the time of examination of the victim he did not find any violence mark either in the body or in the private parts of the victim.

- 11. PW3, Khala Basumatary is the informant of this case and father of the victim. In his evidence he had deposed that the occurrence took place about 3½ years ago. On the date of occurrence his daughter (victim) went to see 'Mela' (fair) at Rowta. His daughter did not return till the next day. On the next day, some ABSU members informed him that his daughter was found with accused persons in suspicious circumstances. Hence, they detained the accused person along with his victim daughter. PW3 further deposed that the members of ABSU brought his daughter to his home and in this regard he lodged FIR before the police. PW3 did not know as to whether the accused person had kidnapped his daughter or not. His daughter did not tell him anything about the incident before lodging the FIR. PW3 put his thumb impression in the FIR. In cross-examination PW3 had stated that he did not know as to what incident had occurred in between his daughter and accused persons. He did not know as to wherefrom ABSU got his daughter on the next day of the incident.
- 12. PW4, the victim of the case. In her evidence she had deposed that the occurrence took place in the year 2016. She knew the accused Fungsha Bramha since before the incident. The accused used to talk with her by addressing her as his younger sister. One day accused Fungsha asked her to accompany him to see mela (fair) which was held in Dhansirighat, Rowta. Accordingly, she accompanied him in his motorcycle to see the mela (fair). While they were enjoying the mela (fair) it became dark. So the accused brought her to one of his relative's house with the assurance that on the next day he would bring her at her house. Later, the members

of ABSU came to know about her coming with the accused to see the mela (fair) at Dhansirighat, Rowta but not returning to home. The members informed her father and also took her to her home when she narrated before them as to how she came to Dhansirighat but could not return home as it became night. And the ABSU members after bringing her back to her home informed all about the incident to her father. Her father lodged the FIR in this regard. At the time of incident she was 18 years old. When she was staying with him, the accused did not misbehave with her. Police sent her for medical examination and also got her statement recorded before the magistrate U/S 164 CrPC. She stated before the police as tutored by the members of ABSU. Ext. 2 is her statement U/S 164 CrPC wherein Ext. 2(1), 2(2) & 2(3) are the signatures of PW4. About two months back she solemnized marriage with one Mithisa Daimary of Rowta. In cross-examination PW4 had stated that there were many persons in the mela (fair) when she visited there. When she was brought before the court to get her statement recorded, members of ABSU as well as NDFB were present and she gave her statement as tutored by them under pressure. The accused persons had not done anything contrary to her reputation and fame.

13. PW5, S.I. Dipankar Gogoi is the Investigating Officers of the case. In his evidence he had deposed that on 29-03-16, he was posted as Officer-in-Charge of Rowta PS. On that day, on receiving an FIR from Khala Basumatary he registered a case being Rowta PS case No 42/16 U/S 6 of POCSO Act, and he himself took up the investigation of the case. In course of investigation he visited the place of occurrence, recorded the statement of witnesses U/S 161 CrPC including the informant and victim girl. The victim was sent for medical examination. Both the accused persons were arrested and taken into custody and forwarded to court. He seized one mobile phone. He drew up the sketch map of the place of occurrence and procured the medical examination report. He also collected the CDR in connection with this case. He seized the underwear garments of the victim

and sent for FSL examination. One motorbike was seized in connection with this case. In the midst of investigation, he was transferred to another PS and hence he handed over the case diary to his successor I/O to take further necessary action. Ext. 3 is the FIR lodged by the informant Khala basumatary. Ext. 3(1) is his note of the registration of the case along with his signature. Ext. 4 is the seizure list of one black colour Bajaj Pulsar bike. Ext. 4(1) is the signature of PW5. Ext. 5 is another seizure list of one black colour inner and one red coloured panty. Ext. 5(1) is the signature of PW5. Ext. 6 is the seizure list of one mobile handset. Ext. 6(1) is the signature of PW5. Ext. 7 is the sketch map of the place of occurrence prepared by him. Ext. 7(1) is his signature. In cross-examination PW5 had stated that the victim appeared before the PS along with her guardian. He did not seize any article at the place of occurrence. The motorcycle was seized from one Augustin Muchahary. He did not send the seized panty of the victim to serologist of the FSL for examination. The occurrence took place on 26-03-16 and the FIR was lodged on 29-03-16. The delay of lodging the FIR has not been explained in Ext. 3. Ext. 5 was seized on 08-04-16. He had denied the suggestion that accused persons were not involved in kidnapping and rape of victim.

14. PW6, Inspector Dilip Mili the other Investigating Officer of the case. In his evidence he had deposed that on 29-01-17, he was posted as Officer-in-Charge of Rowta PS. On that day he received the case diary in respect of Rowta PS case no 42/16 U/S 6 of POCSO Act for investigation which was earlier investigated by his predecessor O/C Dipankar Gogoi to complete the remaining investigation of the case. On scrutiny of case diary he found that the investigation of the case was almost completed and only the charge-sheet being remained to be laid against the accused. Having found primafacie case against the accused he laid the charge-sheet against the accused persons U/S 6 of POCSO Act. Ext. 8 is the charge sheet. Ext. 8(1) is his signature. Cross-examination of PW6 had been declined by the defence.

- 15. On appraisement of the evidences on record it appears that PW4, the victim of the instant case has totally negated the incident of sexual assault upon her by the accused persons. The facts divulged by the victim in her evidence is that the accused Fungja Brahma used to address her as his younger sister and on the date of occurrence he took her to enjoy a fair which was held at Dhansiri Ghat Rowta. As it became night while they were enjoying the fair the accused instead of bringing her to her home took her to one of his relative's house with the assurance that on the next day he would bring her back home. Later on, the members of ABSU intervened and took her to her home and her father lodged the FIR. The victim girl has also divulged that at the time of incident she was aged about eighteen years. She has also deposed that she gave her statement before the Magistrate as tutored by the members of the ABSU as well as NDFB. She also revealed in cross-examination that the accused persons had not done anything contrary to her reputation and fame. PW3 the informant and father of the victim girl has also not deposed anything implicating the accused persons in the alleged incident of sexual assault upon his daughter. He has also deposed that prior to filing of the FIR he was not informed about the incident by his daughter. He also expressed his ignorance as to what incident had taken place between the accused persons and his daughter. Thus PW3 and PW4, who are the material witnesses of the instant case, have not adduced evidence supporting the prosecution story. Their evidence did not disclose any incident of sexual assault upon the victim girl by the accused persons.
- 16. In view of above discussions it appears that the prosecution has failed to establish the charge under Section 6 of POCSO Act against the accused persons.
- 17. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

- 18. In the result, the accused persons Fungja Brahma and Ekaram Daimari are found not guilty under Section 6 of POCSO Act and acquitted of charge under Section 6 of POCSO Act and set with liberty forthwith.
- 19. Judgment signed, delivered and pronounced in the open court today the 04^{th} of June, 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) 10/2017 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 :Medical report.

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

Ext.-3 : FIR.

Ext.-4 : Seizure list.

Ext.-5 : Seizure list.

Ext.-6 : Seizure list.

Ext.-7 : Sketch map.

Ext.-8 : Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Bilad Daimary.

PW2-Dr. Bhagirath Dey.

PW3- Khala Basumatary.

PW4- Victim-A.

PW5- S.I. Dipankar Gogoi.

PW6- Inspector Dilip Mili

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)

Addl. Sessions Judge.

Udalguri.