IN THE COURT OF THE JUDGE, CHILDREN COURT ::: CHIRANG, KAJALGAON.

Children's Court (P) Case No. 1(RKT)/2019 U/S 6 of POCSO Act.

State of Assam Vs. Sri Ram KiskuChild conflict with law (C.C.L)

PRESENT:

Shri D.J. Mahanta, Judge, Children Court, Chirang, Kajalgaon

ADVOCATES APPEARED:

For the State : Shri D. Das, Ld. Public Prosecutor

For the C.C.L. : Mr. M.K. Wary, Ld. Advocate

Date of evidence

: 17.12.2019

Date of Argument

: 22.01.2020

Date of Judgment

: 22.01.2020

<u>JUDGMENT</u>

Special Judge Chirang, Kajalgaon

The prosecution case, in brief, is that on 01.11.2017, the informant Shri Alma Hasda lodged an FIR before the I/C, Shantipur Police Out Post alleging that on 06.10.2017, Friday, at about 12 o' clock midnight, while Miss 'X' (name is withheld), 13 years, the victim was coming towards home from the fair of Lakshmi Puja held at Nakedara, on the way, the child conflict with law and another boy Kartik Besra, who were hiding near the road, suddenly came out and tying her mouth with cloth, took her to the nearby jungle and committed rape upon her thereon. After the occurrence, while the victim was weeping on the road, one Shri Ghatial Tudu of North Nakedara along with his three friends found the victim and she reported them about the entire incident and thereafter, they brought her to her home and handed over to her parents.

- 2. After receipt of the FIR, the In Charge, Shantipur Police Out Post made Shantipur O.P. GDE No. 09 dtd. 01.11.17, and the I/C himself took up the investigation of the case and forwarded the FIR to the O/C, Runikhata Police Station for registering a case. The O/C, Runikhata P.S. accordingly registered a case being numbered as Runikhata P.S. Case No. 36/2017 U/S 341/376/(2)(i)/376(D) IPC R/W Section 6 of POCSO Act. Accordingly, the I.O. arrested the child conflict with law, namely Ram Kisku, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C and after completion of investigation, submitted charge-sheet against the child conflict with law, namely, Ram Kisku and accused Kartik Besra showing him as absconder U/S 341/376/(2)(i)/ 376(D) of IPC R/W Section 6 of POCSO Act. As the child conflict with law Ram Kisku was juvenile, hence, the case against him was sent to the Juvenile Justice Board (in short JJB), Bijni. In the meantime, JMFC, Chirang, Kajalgaon has been designated as Principal Magistrate for which case record was transferred to Principal Magistrate, JJB, Chirang, Kajalgaon.
- 3. After receiving case record, JJB, Chirang, Kajalgaon directed the I.O. to examine the child conflict with law by a Medical Board and to submit a report. Accordingly, a preliminary report was submitted and after considering the report of Clinical Psychologist, District Mental Health Programme, Bongaigaon dated 13.05.2019, it was found that age of the CCL on the date of occurrence was above 16 years for which the case was transferred to this Court for trial of the child conflict with law as an adult.
- 4. The child conflict with law appeared before the court. This court after thorough inquiry held that trial will be continued against the C.C.L as an adult. On perusal of entire materials on record and hearing both sides on point of consideration of charge and after having found a prima facie case, formal charge was framed U/S 6 of POCSO Act against the child conflict with law. Charge was read over and explained to the child conflict with law to which he denied to plead guilty.

5. In support of the case prosecution side examined as many as 5 (five) witnesses.

Following witnesses were examined:-

- (1) Sri Mangal Soren as PW 1
- (2) Victim Miss X (name is withheld) as PW 2
- (3) Sri Ghatial Tudu as PW 3
- (4) Sri Alma Hasda (Informant) as PW 4
- (5) Smt. Shanti Soren @ Hasda as PW 5

Considering the evidence of above witnesses the prosecution declined to adduce further evidence because same would not improve the case for which further evidence was closed.

- 6. Statement of the victim U/S 164 CrPC was exhibited as Ext.1.
- 7. Defence plea is of total denial. Defence adduced no evidence but during cross examination of the victim defence exhibited her earlier deposition in Special (P) Case No. 43(RKT)/2018 as Ext. A.
- 8. Heard argument from both sides. I have perused the entire evidence on record. I have also considered the statement of the child conflict with law recorded u/s 313 Cr.P.C.

POINT FOR CONSIDERATION:-

For the offence U/S 6 of POCSO Act

1. Whether on 06.10.2017, at about 12.00 a.m. night, at village North Nakedara bazar, on the way under Runikhata P.S., the child conflict with law committed aggravated penetrative sexual assault (gang penetrative sexual assault with other accused) upon Miss 'X' (name is withheld), aged about 13 years daughter of the informant?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 10. Now, I want to scrutinize the prosecution evidence on record to prove the case U/S 6 of POCSO Act.
- 11. It was alleged in the FIR that when victim was returning from fair of Lakshmi Puja, on the way, child conflict with law Ram Kisku and accused Kartik Besra restrained her and took her to nearby jungle from the road tying her mouth with cloth and committed rape upon her thereon.
- 12. PW 1 Mangal Soren, the village headman of Nakedara village deposed that occurrence took place about three years ago. He heard from the informant that his daughter went to Nakedara bazaar to enjoy Lakhi Puja. He further told him that the present child conflict with law along with one Kartik Besra forcefully took her to nearby jungle and committed sexual intercourse with her. He only heard about the incident but he did not know whether allegation was true of false. He has no personal knowledge about the incident.
- 13. PW 2 is the victim. She deposed that occurrence took place about three years ago. The present child conflict with law caught her mouth when she was returning from Nakedara Lakhi Puja. Another boy Kartik Besra committed sexual intercourse with her. When Kartik Besra committed sexual intercourse with her, the present child conflict with law caught her mouth. This incident took place within jungle. Two boys coming on the road brought her to her home but she did not know their names. Ghatial Tudu took her to her home. During cross, she stated that she deposed before the Court in another case against Kartik Besra. It was suggested that she stated before the Court that present child conflict with law along with other, namely Kartik Besra did not commit any sexual act with her but she denied the same. At Lakhi Puja, her friends introduced Kartik Besra with her. Present child conflict with law did not commit sexual intercourse with her. It was further suggested that child conflict with law did not catch her mouth and she had love affair with Kartik Besra but she denied the same. It was further suggested that there was no such incident as stated by her against the present child conflict with law but same was denied by this witness. Ext. A is her earlier deposition before

the Court of Special Judge in connection with Special (P) Case No. 43(RKT)/2018 where during cross examination she stated that Kartik Besra did not commit any sexual act with her.

- 14. PW 3 is Shri Ghatial Tudu, who deposed that occurrence took place about three years ago, at about 10.00 P.M. Occurrence took place at Nakedara market. At that time, there was a fair for Lakhi Puja at Nakedara market. He went to the fair and after enjoying the fair, at about 10.00 PM, he was returning to his home on foot. On the road, he met the victim along with the in-charge of Santipur P.P. I/C asked him whether he knew the victim or not. Then he replied that he knew her. I/C asked him to bring her to their house and accordingly, he took the victim to her home. He did not know why police brought the victim along with them and victim also did not state anything to him. He did not know what was actually happened with the victim.
- 15. PW 4 is the informant as well as father of the victim. He deposed that occurrence took place about three years ago. On the date of occurrence, at about 9 PM, he along with his wife and victim went to Nakedara market for enjoying 'Mela'. At about 11 PM, he along with his wife returned to their home but victim stayed at Puja to enjoy video. At about 11.30 AM, Ghatial Tudu brought the victim to his home and stated that he found her on road when she was weeping. Two boys handed over to him stating that another two boys were also present along with the victim but they fled away. They told Ghatial Tudu that he would have to take the victim to her home. Accordingly, Ghatial Tudu brought the victim to his home. When he asked the victim, she told him that the present child conflict with law along with one Kartik Besra took her to the jungle. Within the jungle, both of them gagged the victim with cloth and committed sexual intercourse with her. He beat the victim. The victim knew Kartik Besra prior to the incident. He did not ask anything to CCL though he met him on next day. Victim told him that the present CCL also committed sexual intercourse with her. During cross, he deposed that he does not know whether CCL committed sexual intercourse with victim or not and victim is not mentally sound.

- 16. PW 5 Shanti Soren @ Hasda who is the mother of victim deposed that occurrence took place about two years ago. On the date of occurrence, at about 9.00 PM, she along with her husband and the victim went to Nakedara for enjoying 'Mela'. At about 10.00 PM, she along with her husband returned to her home, but victim stayed at Puja to enjoy Video. At mid night, one boy took the victim to their home. The victim told her that two boys took her to the jungle and committed sexual intercourse with her. She did not tell the name of the boys. At that time, she did not know that present CCL was involved with the case. She does not know what was done by the present CCL. After the incident, victim eloped with a boy of village Nayek gaon.
- After going through the entire evidence adduced by 17. prosecution, in my view, the victim is not reliable witness. She stated that one Kartik Besra committed sexual intercourse and present CCL assisted him by catching her mouth. In this regard, learned defence counsel during crossexamination pointed out that she did not state such facts before the Court when trial was conducted in respect of other accused Kartik Besra. I have gone through the earlier deposition of PW 2 which was exhibited as Ext .A. It is found that in her cross-examination, she clearly denied the allegation labeled against the other accused Kartik Besra. According to her, nothing was happened between her and Kartik Besra. Same witness in her later deposition before this Court stated that she did not make such type of statement before the earlier Court, which reflects that she is wholly unreliable witness. Moreover, she deposed that she informed one Ghatial Tudu about the incident who took her to home. This fact was clearly mentioned in the FIR. Ghatial Tudu PW 3 deposed that he met the victim along with In-charge of Shantipur P.P. The In Charge told him to take her to their home. Accordingly, he took the victim to her home but he did not know why victim was kept by police. The PW 3 showed ignorance about the incident. He further deposed that victim did not state anything to him and he also did not ask anything to her. The defence version is that present CCL was absent and he was no way involved with the alleged incident. PW 4 is the father of the victim. According to PW 4, Ghatial Tudu, the PW 3 brought the victim to his home. He deposed that two boys handed over the victim to Ghatial Tudu but this fact was not

supported by Ghatial Tudu. According to victim and her father, Ghatial Tudu first met the victim and victim reported the matter to him and he took her to the house of PW 4. On the other hand, Ghatial Tudu deposed that he met the victim when she was along with the police. Mother of the victim showed ignorance about the incident. She clearly stated that at the time of incidence they did not know who committed the alleged incident. After scrutinizing the evidence in toto, I have found that different witnesses stated the story in different way and no one corroborated to each other. As victim is found wholly unreliable witness, in my view, on the basis of her sole statement, CCL cannot be convicted for the offence mentioned above. Other witnesses also failed to support the story narrated by the victim before this Court. It is noticed that initially victim showed ignorance about the identity of Kartik Besra but during her later deposition she divulged that she had known the boy prior to the incident. Victim also totally denied the fact that the CCL had committed sexual intercourse with her. According to victim, CCL only assisted the other boy. It is revealed from her earlier deposition that in her cross, she totally denied the allegation sexual intercourse by other accused Kartik Besra. According to her, the other boy did not commit any sexual act with her. If I believe her earlier deposition, then the present version is false. If nothing was committed by other boy, then assistance of the CCL does not arise. Considering the entire evidence on record, in my view, prosecution failed to bring home the charge under Section 6 of POCSO Act against the CCL. There is no cogent evidence from the side of prosecution to book the CCL for any offence under Indian Penal Code also. The point mentioned above is remained as not proved. Accused is not found guilty.

Special Judge Chirang, Kajalgaon

ORDER

- 18. Prosecution miserably failed to prove the case U/S 6 of POCSO Act against CCL Ram Kisku. He is acquitted and set at liberty. His bail bond is cancelled.
- 19. Seized article, if any, shall be disposed of according to law.

20. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.

Given under my sign and seal of this Court on this the **22**nd day of **January**, **2020**, at Kajalgaon, Chirang.

(D.J. Mahanta)

Judge, Children Court, Chirang, Kajalgaon.

Dictated and corrected by me,

(D.J. Maĥanta)

Judge, Children Court, Chirang, Kajalgaon.

<u>APPENDIX</u>

Prosecution witness:

PW 1 – Sri Mangal Soren

PW 2 – Victim Miss X (name is withheld)

PW 3 - Sri Ghatial Tudu

PW 4 – Sri Alma Hasda (Informant)

PW 5 - Smt. Shanti Soren @ Hasda

Prosecution Exhibit:

Ext-1 Statement of the victim U/S 164 Cr.P.C

Material Exhibit (Prosecution):

Nil

Defence Witness:

Nil

Defence Exhibit:

Ext-A- Earlier deposition of the victim in Special (P) Case No. 43(RKT)/2018.

(D.J. Mahanta)

Judge, Children Court, Chicang, Kajalgaon.