IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BAJALI, PATHSALA

Spl. POCSO Case No. 11 of 2018

U/S - Sec. 4 of POCSO Act, 2012.

State

- Versus -

Rinku Kalita

: Accused person.

Present: Sri L.K. Saikia, AJS. Additional Sessions Judge, Bajali, Pathsala.

Appearance & particulars :-

For the State : Smti. Dhira Devi Ld. Addl. P. P.

For the accused persons :Sri Dipak Das. Ld. Advocate.

Dates of recording evidences : 02/07/2019.

Date of recording statements u/s 313 Cr.P.C. : 07/08/2019.

Date of Argument : 07/08/2019.

Date of Judgment : 16/08/2019.

J U D G M E N T

1. The prosecution case in brief, is that, one Arup Roy lodged an ejahar on 17/05/2018 with the In-Charge, Sarupeta Police Out Post alleging, *inter-alia*, that on 16/05/2018 at about 8 pm his sister aged about 14 years went to attend natural call then accused taking the advantage of absence of any person in the house gagged her mouth, touched her body and tried to commit bad act. As and when the victim made hue and cry the accused fled away from there and thereafter the victim went out from the house and narrated about the incident to

Anup Roy. Hence, this case.

- 2. On receipt of the ejahar, Sarupeta OP registered a GD Entry No. 406 dated 15/05/2018 and forwarded the same to Patacharkuchi Police Station to register a case under proper section of law and accordingly it was registered as Patacharkuchi P. S. Case No. 307/18 u/s 4 of POCSO Act.
- During investigation police visited the place of occurrence, recorded the statements of witnesses including the victim girl, sent her for medical examination, produced her before the Court wherein the Ld. Magistrate recorded her u/s 164 Cr.P.C, arrested the accused person and forwarded him to the court and after completion of investigation, having been found *prima-facie* case, the I/O sent up the accused for trial by filing charge sheet u/s 4 of POCSO Act, 2012.
- 4. The accused was produced from jail hajot for trial and the copies were furnished to him. After hearing both the parties, framed charge under section 4 of POCSO Act, 2012 and the accusation of charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- The prosecution in order to prove its case examined altogether 2 (two) PWs including victim, informant and I/O. The defence plea is of total denial. The accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations levelled against him by the prosecution witnesses. The defence side has not adduced any defence evidence.
- **6.** Heard argument of learned Addl. P. P. and the learned defence counsel. Perused the record.

7. POINTS FOR DETERMINATION

(i) Whether the accused person on 16/05/2018 at village Siyalmari (Pashimchupa) under Patacharkuchi P.S. of district Barpeta, while the victim was went to toilet, then the accused person took her forcefully and committed penetrative sexual assault and thereby committed an offence punishable u/s 4 of

Evidence of witnesses

8. PW - 1 Arup Roy, the informant in this case deposed that on 16/05/2018 at about 8.30 pm the incident took place. At that time she was reading in class IX at Padmasri Nalini Bala Devi Girls High School, Singimari and her age was about 14 to 15 years. At the time of happening of the incident the father of the victim was not at home, he was in his working place in Gujrat. It is also stated that he has a shop at Puthimari Bazar and on the day of incident he was in his shop. The victim is living with them at their house since her mother had expired. On that day at about 8.30 pm while victim was going to her parents house from their house then Rinku Kalita and Sonmani Kalita abstracted her on the way and facing the situation she raised hue and cry. Hearing about her hue and cry nearby villagers came to her and then his wife ranged him and told him about the incident. Having got the information from his wife immediately he came to his house. On the next day at about 8.30 am he filed the FIR.

In cross-examination, PW 1 stated that he has lodged the FIR due to misunderstanding of a fact of the victim. He does not have any objection if the Court acquitted the accused person.

9. PW – 2 Anasmita Roy victim of this case has deposed that on 16/05/2018 at about 8.30 pm while she was going to her house from the house of her uncle and on the way Sonmani Kalita and Rinku Kalita abstracted her to going. Then she raised hue and cry and hearing her hue and cry nearby villagers came to her. Thereafter her brother Anup Roy also arrived near to her. On the next day morning her brother lodged the FIR and after lodging the FIR police recorded her statement, took her to FAAMCH, Barpeta for Medical examination and after completion of medical examination police produced her before the court and in the Court magistrate has recorded her statement. Ext. 2 is her statement and Ext. 2(i) is her signature. Police has seized her wearing clothes vide seizure list Ext. 3.

In cross-examination, PW 2 stated that while police

interrogated her at that time they were in police uniform even police were wearing uniform while produced her before the magistrate in the Court. She stated before the Magistrate as instructed and tutored by police. When she saw the two boys on the road she was afraid so, she raised hue and cry but the said two boys did not abstract her way of going even they did not say anything that she should not go. Due to misunderstanding of fact her brother lodged the FIR in the police station.

Discussions, Decision, and Reasons thereof

- **11.** To arrive at a judicial decision, let me considered what the witnesses have stated. Also perused the case record and gone through the provision of law.
- evidence of the witnesses it comes to light that the instant case has been filed due to misunderstanding of a fact. PW 1 stated that he had not seen any incident and he has got no any objection if the accused person would be acquitted from this case. PW 2 the victim has deposed that on the day of incident on seeing the two boys in the dark night she afraid and made hue and cry. The said two boys did not do anything to her. Except the incident of afraiding nothing had happened with her. PW 1 also specifically stated that she narrated before the Magistrate while her statement was recorded as tutored by the police.
- 13. From the above evidence of witnesses and considering the facts and circumstances of this case it becomes crystal clear that nothing had happened with the victim as stated in the FIR and statement u/s 164 Cr.P.C. The case has been filed due to misunderstanding of the fact.
- **14.** In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as alleged.
- **15.** Accordingly, the accused Rinku Kalita is acquitted of the offence charged u/s 4 of POCSO Act, 2012 and set him at liberty forthwith.

- **16.** A copy of this judgment and order be given to the the District Magistrate, Barpeta .
- **17.** The Spl. POCSO Case is disposed of accordingly.
- **18.** Judgment is pronounced and delivered in the open Court in presence of both the parties and I put my hand and seal of this Court on this 16th day of August, 2019.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictated & Corrected by me

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictation taken and transcribed by me. (Alakesh Das, Steno)

APPENDIX:-

Oral evidences:-

PW-1 Sri Arup Roy.

PW-2 Anasmita Roy

Documentary evidence:-

Ext.-1. Ejahar

Ext.-2 Statement of victim

Ext. - Seizure list

Defence evidence.

Nil.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.