IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

Spl(POCSO) case No.12 of 2019.

(U/S: 7/8 of POCSO Act)

State
-VersusShri Krishna Newar
S/O Late Kedarman Newar
Village- Tekeliakurgrant
P.S-Sipajhar
Dist-Darrang(Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma,

AND

Learned advocate for the accused :Mr. Lakhyan Saharia

Evidence recorded on :14/03/19, 14/06/19, 02/09/19

22/10/2019 and 04/01/2020

Argument heard on :05/02/2020

Judgment delivered on :05/02/2020.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 02/12/2018 one Sri Bapu Pradhan lodged an FIR before the O/C, Sipajhar Police Station to that effect that on 01/12/2018 at abpout 5 p.m. taking advantage of absence of any other person in his house, the accused with an ill-motive bit the cheek of his 8 year old daughter Miss X(real name is withheld) and he also pushed his finger into the vagina of Miss X, that thereafter the accused offered Rs.10.00 and asked not to disclose the facts to others.
- 2. The FIR lodged by the informant Bapu Pradhan was registered by Police and thereafter, the O/C of Sipajhar Police Station started investigation of the case. In the course of investigation, the statement of the victim was recorded in the Court and she was also medically examined. After completing the investigation a charge sheet was submitted against the accused U/S 7/8 of POCSO Act.
- 3. On his appearance before this Court, the written charge U/S 7/8 of the POCSO Act explained and read over to the accused to which the accused pleaded not guilty.

4. Point for determination:

(i) Whether on 01/12/2018 at about 5 p.m. the accused touched the private part of the victim Lakhi Pradhan?

REASONS AND DECISION THEREON

- 5. In the course of trial, the prosecution examined victim PW1 Miss X , PW2 Bapu Pradhan, PW3 Bikash Pradhan, PW4 Smti. Hima Pradhan, PW5 Miss Hima Pradhan, PW6 Sanjib Pradhan and PW7 Rakhi Pradhan.
- 6. PW1 Miss X, a 9(nine) year old girl has stated before this Court that on the day of the incident alleging that she was not doing well in her Art examination, the accused slabbed her. Except this no other incident occurred. Before examining her some general questions were put to her

and she gave satisfactory answer to the questions. Therefore, it was considered that she was fit to explain an incident. She also stated before this Court that she had given the same version in the Court when she was examined during investigation.

- 7. PW2 Bapu Pradhan, father of the victim(PW1) has stated that on the day of the incident he was informed by the victim that the accused Krishna Newar touched her body and also touched her vagina and on the following day he lodged the FIR. He proved Ext.1 as his FIR.
- 8. PW3 Bikash Pradhan, younger brother of PW2 has stated that on the day of the incident the accused had beaten up Miss X. Therefore, his elder brother lodged a case against the accused. This witness was declared as hostile by the prosecution.
- 9. PW4 Smti. Hima Pradhan, mother of victim(PW1) has stated that on the day of the incident while Miss X was lying on the bed the accused came near her and kissed her and thereafter, pushed his penis through the vagina of Miss X and thereafter, the accused gave 10(ten) rupee to her asking her not to disclose the fact to others.
- 10. PW5 Miss Hima Pradhan has stated that she heard that on the day of the incident questioning on the performance of her drawing examination the accused slabbed Miss X. This witness was also declared hostile by the prosecution.
- 11. PW6 Sanjit Pradhan and PW7 Rakhi Pradhan also narrated the same fact as stated by the PW5 Hima Pradhan. Both these witnesses were declared hostile by the prosecution.
- 12. In this case as many as seven witnesses were examined. Out of the prosecution witnesses, the informant(PW2) and his wife(PW4) have supported the prosecution story. The victim(PW1) also did not support the prosecution story.

13. According to the FIR(Ext.2) the alleged incident occurred at about 5 p.m. on 01/12/2018 and the FIR was lodged on the following day. The delay of lodging FIR has not been explained. On careful examination of PW2 and PW4, who are none but the parents of the victim, it is seen that they are not stating the same facts. According to the PW2, he was told by the victim that the accused touched her body and vagina. But the version of PW4 is that she learnt from the victim that the accused pushed his penis through the vagina of her daughter Miss X. Thus, there is no consistency of the facts in the evidence of the two supporting witnesses,PW2 and PW4, Therefore, their evidence is not safe to hold the accused person

14. Thus, the accused deserves benefit of doubt. Hence, the accused Krishna Newar is acquitted and set at liberty forthwith.

15. Given under my hand and seal of this Court this 05th day of February, 2020.

(P.K.Bora) Sessions Judge, Darrang, Mangaldai.

Dictated and corrected by me.

guilty against the alleged offence.

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

(A)Prosecution witnesses:

- (i)PW1 Miss X
- (ii)PW2 Bapu Pradhan
- (iii)PW3 Bikash Pradhan
- (iv)PW4 Hima Pradhan
- (v)PW5 Hima Pradhan
- (vi)PW6 Sanjib Pradhan
- (vii)PW7 Rakhi Pradhan
- (B)Defence witness: Nil
- (C)Exhibits:
- (i)Ext.1 statement of victim
- (ii)Ext.2 FIR

Sessions Judge, Darrang, Mangaldai.

Typed by me.

Nareswar Deka Stenographer.