IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.31/2018

U/S-8 of POCSO Act, 2012

State of Assam

-Versus-

Sanchar Daimary

s/o-Prabhat Daimary

Resident of vill -Sekarnej Patala

P.S.-Paneri

Dist- Udalguri (BTAD)

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor ------for the State

Smti. Kaberi Choudhury, Ld. Advocate

-----for the accused

Date of evidence: 29.08.2018, 01.11.2018, 21.12.2018

Date of Argument:05.01.2019

Date of Judgment:11.01.2019

JUDGEMENT

- 1. The Prosecution case in brief is that—on 11.06.2018 at around 7.30 p.m, the informant—Sri Charitra Deka lodged an ejahar alleging that accused—Sanchar Daimari attempted to rape the prosecutrix but timely arrival of the informant in the spot, the prosecutrix was saved from the rape attempt by the accused. And hence, this ejahar.
- 2. On the basis of the said ejahar, North Guwahati P.S Case No. 55/2018 U/S-8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 8 of the POCSO Act, 2012 against accused— Sanchar Daimari. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as five (5) numbers of witnesses including the informant and victim. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and declined to adduce evidence.

5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 11.05.2018 at about 7.30 a.m tried to commit rape the prosecutrix, and thereby committed sexual assault on the minor victim girl within the meaning of section 7 of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S-8 of the POCSO Act, 2012 ?

6. **DISCUSSION, DECISION AND REASONS THEREOF**

Perused the record. Heard Ld. Counsels for both the sides. In support of the case, prosecution examined five (5) witnesses.

- 7. Let us go through the evidences available on record.
- 8. P.W.1 is the prosecutrix of this case. She stated that she does not know the informant but she knows the accused person, who is her Maternal Uncle. She was studying in class-III at the relevant time by staying in the house of the accused. But now they have shifted to her original home at Karbi Anglong. P.W.1 disclosed that accused did not do anything with her and she does not know why the case has been given against him by one Mr. Deka. This witness also disclosed that she gave her statement before the police as tutored by the informant. Ext.1 is her statement before the Magistrate U/S-164 Cr. P.C. Ext. 1 (1& 2) are her signatures.
- 9. P.W.2, Sri Charitra Deka is the informant of this case. He knows the accused as well as the victim. He stated that the incident took place on 11.05.2018 at 7.30 8.00 p.m. Prosecutrix was 11 years old at the time of occurrence. She is the niece of the accused and was staying with him. This witness disclosed that on the night of occurrence while he was sleeping in his room adjacent to the room of the accused, he heard the shouts of the prosecutrix. He came out and saw the accused lying on the top of the prosecutrix in a bed and he was doing some bad act with her. Thereafter, he gave two blows to the accused. Police arrived the spot and caught hold of the accused. Thereafter, P.W.2 lodged the ejahar. Ext.2 is the ejahar. Ext.2 (1) is his signature.
- 10. In his cross-examination P.W.2 disclosed that there was a quarrel between him and the accused as he used to watch T.V in high volume which disturbed the accused. He also stated that he was no longer staying in the rented house as the landlord asked him to vacate the same.
- 11. P.W.3, Ajit Kalita deposed in his evidence that he heard from some village people that accused raped a small girl who was staying with him in the rented house. In his cross-examination he disclosed that the informant and the accused are the tenants under the same landlord.
- 12. P.W.4, Sri Ganesh Thakuria deposed that he also heard from village people that accused raped a minor girl. Police arrived and arrested the accused.

- 13. P.W.5, is the M/O, Dr. Reshma Talukdar of this case. She has deposed in her evidence that on 11.05.2018 one Miss Anjana Basumatary was brought to her for medical examination in reference to North Guwahati P.S Case No.55/2018 U/S-8 of the POCSO Act, 2012. She was accompanied by WPC, 591 Bihuni Lankasha.
- 14. P.W.5 has further deposed that after completion of physical examination, radiological and laboratory investigation, she opined that there was no evidence of recent sexual intercourse detected on her person. Her age was above 9 years and below 14 years (more specifically below 12 years of age) and there was no evidence of injury detected on her person at the time of examination except some redness on her genital parts. Ext.3 is the medical report. Ext. 3 (1, 2 and 3) are her signatures.
- 15. I have heard the arguments of both the sides. Perused the evidences on record.
- 16. In this case , charge was framed u/s 8 of POCSO Act . Now , question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence . Now, **Sexual Assault** is defined **U/S 7 of POCSO Act** as "Whoever , with sexual intent touches the vagina , penis , anus or breast of the child or makes the child touch the vagina , penis ,anus or breast of such person or any other person , or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7 of the Act.
- Now, in this instant case, there is no allegation by the victim girl of any sexual assault upon her by the accused person. This victim (P.W.1) made it clear in her evidence and in her statement recorded U/S- 164 Cr. P. C that the accused did not commit any sexual assault on her on the date of occurrence. She also made it clear that the accused did not try to do anything with her and she does not know why police arrest her Uncle (the accused). Furthermore, from the cross of P.W.2 (informant) it comes out clearly that there is enmity between him and the accused. Moreover, he had to vacate the tenanted premises as his landlord asked him to do so. It also comes out from the evidence of P.W.4 that both the informant and the accused were tenants under the same landlord. So, the offence U/S- 8 of the POCSO Act is not at all attracted in this instant case.

- 18. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Sanchar Daimari. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S- 8 of the POCSO Act, and set at liberty forthwith.
- 19. His bail bond stands cancelled.
- 20. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 11th day of January, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1 is the prosecutrix

P.W.2, Sri Charitra Deka

P.W.3, Ajit Kalita

P.W.4, Sri Ganesh Thakuria

P.W.5, is the M/O, Dr. Reshma Talukdar

Prosecution Exhibit

Ext.1 is the statement of the Prosecutrix made before the Court U/S—164 Cr. P.C.

Ext.2. is the ejahar.

Ext.3 is the medical report.

Special Judge, Kamrup, Amingaon