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

Spl. POCSO Case No. 03 of 2019

U/S - 18 of POCSO Act, 2012.

State

- Versus -

Hitesh Roy

: 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 Giridhar Choudhury. Ld. Advocate.

Dates of recording evidences : 22-08-2018, 27-08-19.

Date of recording statements u/s 313 Cr.P.C. : 27-08-2019

Date of Argument : 27-08-2019.

Date of Judgment : 27-08-2019.

<u>J U D G M E N T</u>

1. The prosecution case in brief, is that, the informant as well as victim of this case lodged an ejahar on 15-07-2017 with the In-Charge, Sarupeta Police Out Post alleging, *inter-alia*, that on 15-08-2019 at about 6.30 pm while she was alone in the house then the accused entered into her house and disrobed her cloths with intent to commit bad act. Then she raised hue and cry and ran towards the outside of the house. The accused person also chased her armed with

sharp weapon. After sometime she rushed to the house of her neighbour and took shelter there. She also stated that at the time of happening of the incident she was a student of class VIII. Hence, this case.

- 2. On receipt of the ejahar a case was registered as Patacharkuchi P. S. Case No. 563/17 u/s 8 of POCSO Act, 2012 and police investigated into the matter.
- During investigation police visited the place of occurrence, recorded the statements of witnesses including the victim girl, 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 *primafacie* case, the I/O sent up the accused for trial by filing charge sheet u/s 18 of POCSO Act, 2012.
- 4. On being summon the accused was appeared before the Court for trial and the copies were furnished to him. After hearing both the parties, framed charge under section 18 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 2 (two) materials witnesses and after examination prays to close the prosecution witnesses, as there is no chance of further development of this case. After closure of prosecution case, the accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations leveled against him by the prosecution witnesses. The defence plea is of total denial. 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 15-08-2017 at about 6.30 p.m. Entered into the house of informant with an ill motive and

caught hold on her, putting off her wearing cloths and thereby committed an offence punishable u/s 18 of POCSO Act?

Discussions, Decision, and Reasons thereof

- 8. PW 1 Smti Jonli Das has deposed that about 2 ½ years back the victim came to her house by running and behind her the accused person also came. On being asked the victim told that the accused person chased her with intent to kill. In cross-examination PW 1 stated that the victim and the accused person have been living in the same house and he behaved her as his sister. She does not know what had happened in between them. She also does not know whether the victim is maintaining relation with the accused or not.
- 9. PW 2 victim as well as the informant in this case deposed that on 15-08-17 at about 3 pm while she was alone in the house and was bathing and changing her wearing clothes then the accused suddenly came to their house and seeing his appearance, she came out from the room in a nervous state. She stated that the villagers suspected her with the accused and made rumor in the village for which she lead to file this case for satisfaction of the villagers. She stated that nothing had happened against her so police did not take her for medical examination.

In cross-examination, the victim stated that she has good relation with the accused who is her cousin and he did not do anything with her. The FIR was drafted by another person and she does not know the contention of the FIR. Due to misunderstanding of a fact and instigation of the villagers she had filed this case. She has no objection if the accused person would be acquired from this case.

10. The learned counsel for the accused submitted that the star witnesses of the prosecution i.e. the alleged victim has been examined and from her evidence it was revealed that it was a case of misunderstanding and as instigated by the villagers she filed this case implicating the accused. Therefore, the learned defence counsel contended that it is a fit case for recording acquittal.

- **11.** Heard the rival submission of the Ld counsel and perused the case record and also gone through the provision of law.
- 12. On fastidious scrutiny of the case record as well as the evidence of the witnesses it comes to light that the instant case has been filed due to misunderstanding of a fact. On the day of incident while the victim was alone in the house and was bathing and changing her wearing clothes then the accused suddenly came to their house and seeing his appearance, she came out from the room in a nervous state. As per the instigation of villagers she had filed this case but nothing had happened to her, even the accused did not misbehave her at any point.
- 13. In view of the discussion held above, no inference can be drawn against the accused person but to set free from the alleged charge that committed by the accused person.
- **14.** Accordingly, the accused Hitesh Roy is acquitted of the offence charged u/s 18 of POCSO Act, 2012 and set him at liberty forthwith.
- **15.** A copy of this judgment and order be given to the the District Magistrate, Barpeta u/s 365 Cr.P.C.
- **16.** The Spl. POCSO Case is disposed of accordingly.
- **17.** 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 27th day of August, 2019.

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

Dictated & Corrected by me

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

APPENDIX:-

Oral evidences:-

PW-1 Smti Jonali Roy

PW-2 Victim

Documentary evidence:-

Ext.-1. Ejahar

Defence evidence.

Nil.

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