IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl POCSO Case No. 14/2018

u/s 18 r/w Sec. 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Ajoy Munda

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P

For the defence

: Mr. P.P. Borah, learned Advocate.

Dates of recording Evidence: 01.11.2018, 09.01.2019, 02.04.2019, 13.06.2019.

Date of Argument

: 31.07.2019.

Date of Judgment

: 31.07.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 10.04.2018 the informant namely, Sri Ramsingh Munda lodged an 'ejahar' with the OC, Biswanath Chariali PS stating inter alia that on 04.04.2018 at about 10 AM, taking advantage of absence of other inmates in his house, the accused criminally trespassed into his house and he thereafter noticing his 15-year-old sister sleeping, tied both her hands with a 'gamosa'. As soon as his sister awoke from her sleep, he pressed her neck with his hands and threatened to kill her. He with another 'gamosa' gagged her mouth and tried to commit rape on her. At that very moment, he arrived there and the accused then fled away. He stated that on 08.04.2018 at about 9 AM a 'bichar' was held where the accused had admitted to his guilt.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused u/s 448/506 IPC, r/w 8 of the POCSO Act.
- 3. The accused in due course appeared before this court, wherein the copies of the relevant documents were furnished to him. After hearing both the sides on the point of charge and

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taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed an offence u/s 18 of the POCSO Act, 2012, r/w Section 8 of the said Act, the charges were accordingly framed against him, which on being read over and explained, he pleaded not guilty.

4. During trial, the prosecution examined 8 witnesses in all including the Medical Officer as PW7 and the Investigating Officer as PW 8. The accused was thereafter examined u/s 313 CrPC. His plea was total denial. He refused to any evidence on his behalf. The case was thereafter, argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence attempted to commit sexual assault on the said victim, who is a child below the age of 18 years, and in that attempt tied her hands and mouth with 'gamosa' in her house?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant, Sri Ramsingh Munda. He stated that the occurrence took place about 7 months back. According to him, his sister- the victim PW2- was suffering from fever and was in the house sleeping. At about 10 AM of the said day, the accused entered into their house when other inmates were absent and tied the hands and the mouth of the victim with 'gamasa'. At that relevant time, he came to his house. When he opened the door of his house, the accused fled away. He thereafter, untied the victim who told him weeping that the accused wanted to commit 'bad work' on her and he told her that if she would raise alarm, he will kill her by pressing her neck. Later, he caught hold of the accused and given him in custody of the villagers. One 'bichar' was arranged by him but that did not take place. Later, the victim was medically examined. He proved his 'ejahar' as Ext. 1. In his cross-examination he stated that at the time of the occurrence he was on the road. The door of his house was closed from inside and he entered into the house by breaking the door hook. Later, he stated that the door could be opened from outside and he opened the door in that way. He does not know the exact age of the victim.
- 6. PW 8, the Investigating Officer, SI, Amal Chandra Dey however contradicted the PW 1 and stated that the informant did not state before him that he found the victim being tied up. He did not seize any 'gamosa' as the informant did not produce any 'gamosa' before him. When we turn to the evidence of PW 2- the victim, we find her stating that she was sleeping at that relevant time for her illness as she had headache. She thereby contradicted PW1 who had stated that the victim was sleeping in the house at that relevant time due to fever. PW 2 further stated that she was alone in her house when

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the accused entered into their house. She stated that she could not detect as to when the accused entered into their house. The accused tied up her hands first and thereafter, her mouth after she raised 'hullah'. According to her, the accused threatened to kill her, if she would raise 'hullah'. At that moment the informant came and the accused fled away. The informant then untied her hands. She stated that the accused after tying her hands did not harm her. She was medically examined. She proved her statement recorded u/s 164 CrPC as Ext. 2.

- 7. Thus from the evidence of PW 2- the victim, we find that the accused did not do anything to her which suggests that his intention was to commit any sexual assault on the victim. According to her, the accused did not do anything to her except tying her hands and mouth. In her cross-examination she stated that she too was not aware of her actual age.
- 8. PW 7- the Medical Officer, Dr. Mitali Borbora proving the medical examination report of the victim as Ext. 3 stated that she did not find any sign of recent sexual activity on the said victim. According to her, the victim was aged about 17 years. Thus we noticed that the Medical Officer, i.e., the PW 7, did not find any sign of recent sexual activity on the victim.
- 9. PW 3 Kania Munda had stated that he had heard that the accused had committed rape on the said victim, which however is not supported by the victim, PW 2. PW 4, Bhagrai Munda had heard that the accused had entered into the house of the victim but he could not say as to why he had entered into their house. PW 5, Bikram Bhumij stated that he has no knowledge about the said occurrence. PW6 Baida Munda stated that he could learn from the informant that the accused had tied up the hands of the victim inside their house and the accused could not do any 'bad work' with her.
- 10. Thus from the evidence of all the witnesses examined by the prosecution and more particularly from the evidence of the victim- PW 2, we find nothing to show that the accused on the given day had tied the hands of the victim with an intention to commit sexual assault on her. PW 2 stated in her evidence that the accused did not do anything to her except tying her hands with 'gamosa'. PW 8 on the other hand contradicted the PW 1 and stated that he did not state before him during investigation the case that the accused had tied the hands and mouth of the victim inside their house. PW 7, the Medical Officer did not find mark of any sexual assault committed on the said victim. All these therefore, go to show that the prosecution has failed to prove its case against the accused. As such, I acquit the accused from the offences charged against him and set him at liberty forthwith. His bail bond stands discharged. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C.

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The case is disposed of.

Given under my hand and seal of this court on this the 31st day of July, 2019.

(D. BORA)

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Ramsingh Munda

PW2- Victim

PW3- Sri Kania Munda

PW4- Sri Bhagrai Munda

PW5- Sri Bikram Bhumij

PW6- Sri Baida Muda

PW7- Dr. Mitali Borbora (M.O.)

PW8- ASI Amal Chandra Dey (I.O.)

Exhibits proved by the prosecution witnesses:

Exhibit-1: Ejahar

Exhibit-2: photo-copy of Ext. 5 (mistakenly marked)

Exhibit-3: Medico-legal Report

Exhibit-4: Sketch Map

Exhibit-5: Statement of the victim u/s 164 CrPC

Exhibit-6: Charge sheet

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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