## IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora,

Special Judge, Udalguri, Assam.

# Special (POCSO) Case No. 22/16. U/S 6 of the POCSO Act.

State of Assam......Complainant.

Vs

Suruj Ali..... Accused.

Appearance:-

For the Prosecution : Mr. P.Baskey, Public Prosecutor.

For the defence : Mr. T.C. Boro, Advocate.

Date of argument : 17.11.2017.

Date of Judgment : 17.11.2017.

### <u>JUDGMENT</u>

The case of the prosecution, in brief, is that on 2.12.14 at about 8 AM accused taking the advantage of absence of other family members of the informant entered into their house and committed rape on her daughter Marjina Begum, aged about 9 years. On receipt of the FIR Udalguri PS Case No.190/14 u/s 376(2) (i) IPC R/W Section 4 of the POCSO Act was registered. Police held usual investigation. At the conclusion of investigation police laid charge-sheet against accused for the offence punishable u/s 376(2) (i) IPC R/W Section 6 of the POCSO Act.

2. This court furnished copy of the necessary papers to the accused person. Upon perusal of materials on record and hearing submission advanced by the parties this court found a prima-facie case to frame charge against the accused for the offence punishable u/s 6 of the POCSO Act and charge was framed accordingly. Charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. In order to bring home the guilt of the accused person prosecution examined as many as six witnesses. After completion of prosecution evidence, ld. P.P. submitted for closure of evidence on the ground that the complainant, victim in this case nowhere supported any materials of alleged charge. On close scrutiny of the statement of victim and other witnesses could reveal any material against the accused as to the alleged charge. It has been held in S. Rama Reddy Vs. R. Ramy Reddy, reported in AIR (SC)( 2008) 2006 that speedy trial is the fundamental right of the accused person.

Considering the aforesaid view coupled with the aforesaid mandate of the Hon'ble Apex Court, prosecution evidence is closed.

Accused is examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused put before him for his explanation where he denied the evidence and allegation and declined to give defence evidence.

4. I have heard argument advanced by the learned counsel of the parties and carefully gone through the evidence and other materials on record.

## 5. **POINTS FOR DETERMINATION**:

Whether the accused on or about 2.12.14 at about 8 AM at Ranipukhuri, under Udalguri P.S. committed aggravated penetrative sexual assault upon Miss Marjina Begum, aged about 12 years?

#### **DECISION AND REASONS THEREOF:**

6. Prosecution examined victim as PW5. She stated that she knows the accused. No incident occurred on the relevant date. Earlier she has deposed before the Magistrate as tutored by her mother.

7. PW.2, Musstt. Jahanara Begum is the mother of the victim and informant in this case. She deposed that she knows accused Suraj Ali. The occurrence took place about 2 years ago in their house. At the time of occurrence she was not present at home. She came out to pluck chilly on daily wage basis. Her husband was also not at home. He went out for pulling Rickshaw. She came back home in the evening at about 1 PM. her daughter, Marzina Begum was alone at home at the time of ocurrence. While she was working in the Chilly field busy in plucking Chili, Chand Banu Begum told her that her daughter, Marzina was crying. She came back to her house in the evening. Her daughter, Marzina Begum then told that the accused person committed rape upon her. Thereafter, she came to the police station crying and lodged the ejahar. She got the ejahar written by a petition writer and after it being written she put thumb impression thereon.

In cross-examination this witness stated that on the very same day of the occurrence she lodged the ejahar. She has not witnessed the occurrence. Her house is situated adjacent to the house of the accused. The matter has been settled at the village level. She has no objection if the accused is acquitted from this case. Out of misunderstanding of fact she lodged the ejahar against the accused.

8. PW1, Md. Mamin Ali deposed that victim is his daughter. On the day of occurrence after returning home from his work his wife told him that accused committed rape upon his daughter

In the cross-examination this witness stated that out of misunderstanding of fact his wife lodged the ejahar against the accused. He has no objection if the accused is acquitted from this case

- 9. PW3, Joynal Abedin stated that he knows informant Jahanara Begum. He also knows accused Suraj Ali. They hail from the same village. The occurrence took place about one year ago. He came to know that informant Jahanara Begum lodged FIR against accused Suraj Ali. He came to know that accused Suraj Ali caught hold of the hand of victim Marjina Khatoon at the village Path. Police recorded his statement. He is the VDP secretary of village Ranipukhuri.
- 10. PW.4, Abdul Halim stated that he knows accused Suraj Ali. He also knows informant Jahanara Begum. His house is situated at distance of one furlong from the house of informant Jahanara Begum. The occurrence took place about two years ago. The alleged occurrence took place in the house of informant Jahanara Begum. The house of accused is situated opposite to the house of informant invented by a public path. He is the VDP secretary of the locality. Police came to the place of occurrence and asked him to come to the place of occurrence and accordingly he came to the place of occurrence. In their presence the father of the victim informed the police that accused person entered into their (informant) house. Thereafter he left the place.
- 11. PW6, Rafikul Islam stated that he knows accused Suraj Ali. He also knows informant Jahanara Begum and victim Marjina Kharun. The occurrence took place about 1  $\frac{1}{2}$  /2 years ago. He heard that accused committed rape on the victim. He does not know what happened later on.
- 12. In the instant case the the alleged victim girl, who is the vital witness, did not support the case of the prosecution on any material point. It is in the evidence of the victim that accused did nothing with her. Informant, PW2 also stated that at the time of incident she was not present at home. There is no whisper in the evidence of victim that the accused person committed the

5

alleged crime. Father and mother of the victim are reported witness. They have not implicated the accused in the alleged commission of offence. Other PWs also silent about the incident. The ingredients of the offence punishable under Section 6 of POCSO Act are totally missing in the instant case.

13. In view of the foregoing discussion, I find and hold that the prosecution has miserably failed to prove its case against the accused person and hence accused is liable to be acquitted.

14. In the result, accused is acquitted of the charge and set him at liberty.

Given under my hand and the seal of this court on this the 17<sup>th</sup> day of November /2017.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge, Udalguri.