BEFORE THE SPECIAL JUDGE :::::: DHUBRI

Special Case No.1/2015

U/s.376/511 IPC & 8 of POCSO Act

G.R. Case No. (GKJ) 487/2014

State of Assam

- Vs -

Abu Sama Sk.

Present : Sri Rajib Goswami, AJS

Special Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.

Kazi Motahar Hussain, Advocate for defence.

Date of Evidence : 08-05-2015 & 26-08-2015

Date of Judgment : 31-08-2015

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

The prosecution case in brief is that one Saburuddin Sk. had lodged a FIR at Golakganj Police Station on 23-06-2014 to the effect that on 16-06-2014 at around 3 p.m. his minor daughter Sakila Khatun along with another Nazmul Khatun had gone to the open space behind the back of their house. On seeing her, the accused Abu Sama Sk had caught hold of her and was in the process of stripping her when his daughter had raised alarm. Hearing her cries residents in the neighbourhood of the place of occurrence came running to the spot. On seeing them accused Abu Sama Sk had fled away.

- 2. The FIR was registered by O.C., Golakganj Police Station on 23-06-2014 U/s. 376 (2) (p)/511 of IPC R/W Sec. 8 of POCSO Act, 2012. Upon the FIR the I.O. had filed charge sheet against accused Abu Sama Sk. U/s. 354 (B) of IPC and Sec. 8 of POCSO Act, 2012.
- 3. Accused person appeared before the Court, charges in respect of offences under Section 376/511 of I.P.C. and Sec. 8 of POCSO Act had been framed. Charges had been read over, explained and interpreted to the accused Abu Sama Sk. to which accused pleaded not guilty and claimed to be tried.

4. The prosecution had examined as many as 5 (five) witnesses including the informant and the victim. There being no incriminating materials against the accused, the necessity to examine the accused u/s.313 of Cr.P.C. was done away with.

5. POINTS FOR DETERMINATION

- 1. Whether on 16-06-2014 at about 3:00 p.m. at village Chapar Balajan under Golakganj P.S. the accused Abu Sama Sk had attempted to commit rape upon the victim?
- 2. Whether the accused committed sexual assault on the victim?

DECISIONS AND REASONS THEREON

6. P.W-1 Md. Saburuddin Sk. is the father of the victim and the accused was known to him. Age of his daughter was 9 years. The victim while trying to get mangoes from a tree belonging to the accused, the accused caught hold of her and had assaulted her. The matter was brought before the village elders for conciliation. Since the accused did not appear, PW-1 had filed the case.

In cross-examination the P.W-1 had stated that he had seen accused beating his daughter for which a sitting of the village elders had been called for bringing about a settlement about the alleged occurrence. He had admitted during the said sitting that his daughter had gone to get some mangoes from the tree and while climbing up the tree his daughter had fallen down from the mango tree and sustained injuries. The FIR was written at Golakganj P.S. He was not aware about the content of the FIR.

- 7. P.W-2 Musstt. Jamila Bibi had stated that the victim Sokila is her daughter. On the day of the alleged occurrence, her daughter had gone to school. On her way back from the school she had climbed up the mango tree that belonged to the accused. Suddenly her daughter had slipped and had fallen down on the ground and sustained injuries for which her husband lodged the ejahar.
- 8. P.W-3 Mustt. Nasima Bibi, PW-4 Abdul Mannan had stated that the victim and her mother Jamila Bibi were known to them. Both of them had

stated in their evidence that the victim had sustained injuries while trying to get mangoes from the tree that belonged to the accused.

9. P.W-5 Mustt. Sokila Khatun, the victim had stated that she is a

student and reading in class-V. On the day of the alleged occurrence she had

gone to the house premises of accused to get some mangoes. She had climbed

up the mango tree to pluck some mangoes and in the process she had slipped

and had fallen down and sustained injuries. Thereafter, her father had lodged

the ejahar against the accused.

10. Thus there is not an iota of evidence with regard to the accused

attempting to commit rape upon the victim and the prosecution evidence is also

not consistent with the definition of sexual Assault as enumerated in section-7 of

the Act for constituting an offence under Section 8 of the POCSO Act against the

accused. The accused is accordingly entitled to benefit of doubt.

11. Thus summing up the discussion of entire evidence, I hold that

the prosecution has failed to establish the charges u/s. 376/511 of IPC and Sec.

8 of POCSO Act beyond all reasonable doubt against the accused. The accused

is accordingly acquitted and set at liberty forthwith.

Given under my hand and seal of the Court on this 31st of August,

2015.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.

APPENDIX

A. <u>Prosecution Witness</u>.

P.W-1 - Md. Saburuddin Sk.
P.W-2 - Musstt. Jamila Bibi
P.W-3 - Musstt. I Nasima Bibi
P.W-4 - Musstt. Sokila Khatun
P.W-5 - Musstt. Sokila Khatun

B. **Court Witness**

Nil

C. **Defence Witness**

Nil

D. **Prosecution Exhibits.**

Nil

D. **Defence Exhibit**

Nil

Special Judge, Dhubri