IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.5/2017

State of Assam

Versus

Sri Aruna Lawary Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr K.M.Choudhury

Evidence recorded on : 14.7.2017, 04.9.2017 and 29.11.2018

Argument heard on : 16.3.2019

Judgment delivered on: 16.3.2019

JUDGEMENT

1. The prosecution story in brief is that on 05.10.2016 the informant Sri Taranjoy Basumatary lodged the first information report to the effect that on 30.9.2016 at about 4 P.M. the accused Sri Aruna Lawary committed rape on his minor daughter Miss Prabika Basumatary offering her a twenty rupee note and when two persons saw him he fled away from the place of occurrence. Hence, the first information report.

- 2. On receipt of the first information report in Patgaon Police Out Post the case was sent to the Officer-in-charge of Serfanguri P.S. making GDE No.66 dated 05.10.2016 for registration of the case. Accordingly, a case has been registered as Serfanguri P.S. case No.59/2016 under sections 376(2)(i) of IPC, R.W. section 4 of POCSO Act and the case was endorsed to the S.I. Hargobinda Haloi for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses. The statement of the victim was recorded under section 164 Cr.P.C. and medically examined the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 4 POCSO Act against the accused Aruna Lawary. Relevant copies accordingly furnished to the accused by this court and the charge under section 4 of POCSO Act was framed against the accused finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 07 (Seven) number of witnesses including the informant as follows:-

PW 1 Sri Pravika Basumatary,

PW 2 Sri Taranjoy Basumatary (Informant),

PW 3 Smti Tuntri Basumatary,

PW4 Smti Anjuli Basumatary,

PW5 Sri Pramod Basumatary,

PW6 Dr Manisha Boro Phukan,

PW7 SI Hargobinda Haloi

4. The accused person did not examine any witness in support of his case and took the plea of total denial while recording his statement under section 313 of Cr.P.C.

5. **Point for determination:**

Whether the accused committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PWs1, 2, 3, 4 and 5 do not know about the incident.
- 8. PW6, Doctor deposed in her evidence that she examined the victim Prabika Basumatary and on examination she found her hymen was intact and no sexual assault had taken place. In cross she stated that she found no injury over the body of the victim in her examination.
- 9. PW7 I.O. of this case deposed that on the day of the incident the informant lodged the FIR stating that in his absence the accused Aruna Lawary came to his house and offered Rs.20/- to his minor daughter and took her inside the bamboo grove and gagging her mouth committed rape on her. He recorded the statement of the witnesses, drawn sketch map and also sent the victim for medical examination and after completion of investigation he filed the charge sheet.
- 10. From the testimonies of prosecution witnesses it is seen that the most vital witnesses of the prosecution i.e. the informant (PW2) and the victim (PW1) have not supported the case. As per the victim no incident of rape had happened with her and accused did not commit rape on her. The other vital witness i. e. the informant also stated that no incident had happened with his

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daughter. The medical evidence also do not support the prosecution version. The hymen was found intact and there no injury mark on the body of the victim.

- 11. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Sri Aruna Lawary under section 4 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.
- 12. The judgment is delivered in the open court and given under my hand and seal of the court on this 16th March/2019 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar