IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 30/2018 Under Section 04 of POCSO Act.

State of Assam -Vs-

Johan Kerkata.....Accused.

For the Prosecution: Mr. R. Sarma, Addl. Public Prosecutor.

For the Accused: Mr. Samarjit Sarma, Learned Advocate.

Date of Evidence : 28-11-18: 27-02-19: 13-06-19.

Date of Argument : 24-06-19. Date of Judgment : 27-06-19.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 16-05-18, at about 02 pm, the accused Johan Kerkata committed rape upon 3 and ½ (three and half) years old minor daughter of Albinus Guriya in her home. Therefore, on 17-05-18, the father of the victim lodged an FIR with the In-charge Lalpani Out-Post under Mazbat P.S. On the basis of the FIR, Mazbat PS Case No. 23/2018, U/S 4 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet U/S 4 of POCSO Act against the accused person Johan Kerkata.

- 2. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 4 of POCSO Act, learned Special Judge framed charge thereunder and the ingredients of charge under Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 13-06-19, transferred the case to this court for disposal.
- 3. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
- 4. The prosecution in order to prove its case examined the following 5(five) witnesses:

PW1- Dr. Ganesh Das.

PW2- Albinus Guriya.

PW3- Galariya Guriya.

PW4- Victim-A.

PW5- I/O, Billeswar Kalita.

- 5. Situated thus, the point for determination in the instant case are set up as follows:-
 - (I) Whether the accused person committed penetrative sexual assault on Victim-A and thereby committed an offence punishable under Section 4 of POCSO Act?

DISCUSSION, DECISION AND REASON FOR DECISION:

6. I have heard learned Addl. PP Mr. R. Sarma for the prosecution and learned defence counsel Mr. Samarjit Sarma. Learned defence counsel has argued that the ingredients of Section 4 of POCSO Act have not been established in the present case against the accused person.

- 7. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidences adduced by the prosecution.
- 8. PW1 is Dr. Ganesh Das, Medical Officer of this case. In his evidence he had deposed that on 17-5-18, he examined the victim at Udalguri Civil Hospital and on examination he found the following:-
 - No violence mark in the Private Part. No Spermatozoa as explained by Mangaldai Civil Hospital vide Regd. No. 7316/18. Ext. 1 is the medical report wherin Ext 1(1) is the signature of PW1.
 - Cross examination of PW1 was dispensed with.
- 9. PW2 is Albinus Guriya, informant and father of the victim. In his evidence he had deposed that the occurrence took place about 7-8 months ago. On the day of occurrence he went out in the morning for his work as a labour in Dhansiri Tea Estate. After returning from his work when he reached home his wife and his co-villagers told him that accused Johan Kerkata committed rape on his child daughter while she was alone in the house at around 2 PM. PW2 further deposed that his wife was absent at that time as she had came to the field to serve water to their cows for drinking. When his wife returned from the field his daughter narrated about the incident as to how the accused during her absence came to their home and committed rape on her. After coming to know about the incident he went to the house of accused but he was found absent and as such he told about the incident to his father. Subsequently, in the evening, the members of All Assam Adivasi Students Union (AATSA) apprehended the accused and brought to his house. On being asked about the incident the accused refused to say anything and as such he was advised to lodge an FIR before the police. On the next day of the incident he lodged FIR with the In-charge Lalpani Out Post. PW2 put his thumb impression on the FIR. Later police arrested the accused and sent the victim for medical examination. Victim statement was also got recorded U/S 164 CrPC before the

court. In cross-examination, PW2 had stated that on the day of occurrence he reached his home about 5.30 PM. Police recorded his statement. On the day of occurrence when the work was over he came to his home at first and after coming to know about the incident he went to the house of accused. His wife told him about the incident at first. He stated before the police that he did not notice any sign of rape or injury on her person nor had he seen any disorder in her wearing apparel. At the time of the incident his daughter was around 3½ years old. He did not witness the incident of rape on his daughter as he was out of his home. Regarding the incident he was not intended to file a FIR against the accused but the members of AATSA and village people compelled him to lodge an FIR against the accused. PW2 had accepted the suggestion that there was no such incident of rape committed on his daughter but due to pressure of public he lodged the FIR against the accused.

- 10. PW3 is Galariya Guriya, mother of the victim. In his evidence she had deposed that before one year ago the incident occurred at around 2 PM. At the material time of occurrence she was at her house and her daughter was playing outside. In the meantime some people made noise that the accused committed rape on her daughter. In this regard she did not ask anything to her daughter. When her husband returned from work in the evening she told him about the incident. Later her husband was advised to lodge an FIR before the police, so her husband lodged FIR accordingly. In cross-examination, PW3 had disclosed that she did not witness the incident of rape though she was at her home at the material time. Due to pressure given by the village people and members of AATSA her husband had to lodge the FIR against the accused though no such incident had occurred.
- 11. PW4 is the victim. Before recording her evidence she was put some questions to test her capacity of understanding and competency to which she had given rational answers thereto which shows that the child witness has attained sufficient maturity of understanding and thereafter her evidence was recorded. In her evidence she had deposed that on the day of occurrence she was

playing in front of her home and at that time accused came there. She asked chocolate from the accused but when he refused to give chocolate she started to cry. Later she told her mother about the coming of the accused. The accused had not committed anything with her. In the evening, after returning of her father from his work her mother told as to the coming of accused while she was playing outside her home. On suspicion of committing some unlawful acts her father informed the matter to the father of the accused and later on, matter was informed to the member of AATSA. She was brought before the court to get her statement recorded U/S 164 CrPC. As tutored by her mother PW4 gave her statement out of fear. In cross-examination, PW4 had divulged that the accused had not committed anything to outrage her modesty.

12. PW5 is the Investigating Officer Billeswar Kalita. In his evidence he had deposed that on 17-05-18, he was working as Officer-in-Charge, Mazbat PS. On that day one Albinus Guria along with the victim and some other persons came to the Mazbat PS and alleged that his victim daughter was molested by the accused Johan Kerketa. On the basis of the information he recorded GD Entry No. 227 dated 17-05-18 and proceeded to the place of occurrence. He recorded the statement of available witnesses and the statement of the victim U/S 161 CrPC and prepared one sketch map thereof. In the meanwhile informant Albinus Guria the father of the victim lodged a formal FIR on the same day in the afternoon in the Mazabt PS. On the strength of the said FIR, he registered the Mazbat PS case No. 23/18 U/S 4 of POCSO act and himself took up the investigation of the case as he had initiated the preliminary investigation of the case on the basis of GD entry recorded by him. He sent the victim for medical examination and got her statement recorded U/S 164 CrPC. He collected the medical examination report of the victim. The accused was taken into custody and forwarded to Court. On completion of the investigation of the case he laid the charge sheet against the accused Johan Kerketa U/S 4 of POCSO Act. Ext. 2 is the sketch map of the place of occurrence. Ext. 2(1) is the signature of PW5. Ext. 3 is the charge sheet wherein Ext. 3(1) is the signature of PW5. In cross-examination, he had stated

that he visited the place of occurrence on the basis of the GD entry recorded by him. He did not seize any article at the place of occurrence. He recorded the statement of victim U/S 161 CrPC on the same day when GD entry was recorded.

- 13. On appraisement of the evidences on record it appears that though PW2, the informant and father of the victim girl, has adduced evidence that the accused committed rape upon his minor daughter and he came to know about the incident as narrated by his daughter but PW3, the mother of the victim has not adduced evidence corroborating the evidence of PW2. She had deposed that on the date of occurrence some people made noise that the accused committed rape on her but she did not ask anything to her daughter. According to PW3 due to pressure given by the village people and members of AATSA her husband had lodged the FIR against the accused though no such incident had taken place. She further revealed that at the material time she was present at her home but she did not witness any incident of rape upon her daughter.
- 14. Though PW2 had deposed in his examination-in-chief that the accused committed rape upon his daughter but in cross-examination, he accepted the defence suggestion that there is no such incident of rape committed on his daughter but due to pressure of public he lodged the FIR against the accused.
- 15. In the present case, PW4 the victim girl is the most material and vital witness. In her evidence PW4 had deposed that the accused had not committed anything with her on the date of occurrence. When the accused refused to give her chocolate she started to cry. In the evening, when her mother told her father about the visit of the accused to her home her father on suspicion informed the matter to the father of the accused and to the members of AATSA. In cross-examination PW4 has specifically stated that the accused had not committed anything to outrage her modesty.

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16. Thus from the testimony of material and vital witnesses of the case it appears

that on the date of occurrence no incident of rape had taken place. Neither the

victim nor her parents had adduced evidence supporting the prosecution case.

17. In view of above discussion it appears that the prosecution has failed to

establish the charge under Section 4 of POCSO Act against the accused

person.

18. Situated thus the point for determination is decided in the negative and

against the prosecution.

ORDER

19. In the result, the accused person Johan Kerkata is found not guilty under

Section 4 of POCSO Act and acquitted of charge under Section 4 of POCSO Act

and set with liberty forthwith.

20. Judgment signed, delivered and pronounced in the open court today the 27th

day of June, 2019.

Dictated and Corrected

(N.Talukdar)

Addl. Sessions Judge

Udalguri

(N.Talukdar)

Addl. Sessions Judge

Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI.

Special (POCSO) 30/2018 APPENDIX

(A) Prosecution Exhibits :

Ext-1 : Medical report.

Ext-2 : Sketch map.

Ext-3 : Charge-sheet.

(B) Defence Exhibits : Nil.(C) Materials Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Ganesh Das.

PW2- Albinus Guriya.

PW3- Galariya Guriya.

PW4- Victim-A.

PW5- I/O, Billeswar Kalita.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri.