IN THE COURT OF ADDL SPECIAL JUDGE ::KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.22/2019

U/S.8 of POCSO Act

STATE OF ASSAM

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Sri Subhash Adhikary S/O Lt. Bhusan Adhikary village Padmabil, P.S.Gossaingaon District- Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P.

Learned Counsel for the defence Mr. Kalyan Ray

Charge framed on 07.08.2019

Evidence recorded on 09.09.2019; 23.09.2019;

04.11.2019

Argument heard on 30.11.2019 Judgment pronounced on 11.12.2019

JUDGMENT

1. The case of the prosecution is that one xxx, the father of the victim, xxx, lodged an FIR with the Officer in Charge, Gossaingaon P.S alleging that on 5.2.2019 while her minor daughter was speaking to her friend at about 9 pm, the accused Subhash Adhikary apprehended both of them on suspicion that they are committing immoral acts. The accused then took the victim in

 $Note:-\ This is \ not \ certified\ copy.\ Contact\ the\ Office\ of\ District\ \&\ Sessions\ Judge,\ Kokrajhar,\ for\ a\ certified\ copy.$

his custody and confined her in his residence. During confinement, the accused attempted the rape the victim but she shouted and was able to defend herself from the immoral acts of the accused.

- 2. On receipt of the FIR, a case under Section 342/506 IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012, was registered and investigated. After completion of the investigation, a charge sheet was laid against the accused Sri Subhash Adhikary for commission of offence U/S 342/506 IPC read with Section 8 of the POCSO Act.
- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. After hearing both the sides charges under Section 8 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial prosecution examined 6 (six) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

POINTS FOR DETERMINATION:-

(i) Whether the accused is guilty of offence under Section 8 of the POCSO Act?

DECISION AND REASONS:

5. Pw-1 Smti. Mina Adhikary deposed that she knows the informant.

The accused is her husband. In the month of February, 2019 xxx, the minor daughter of informant was apprehended by some Adibashi people while she was in the company of a boy. Her husband was informed and he alongwith the informant brought the girl. That night the informant had kept his daughter, the victim in their residence. On the following morning, the informant took away his daughter. She does not know why the case has been lodged against her husband.

- 6. In cross examination Pw-1 deposed that the victim slept with her at night.
- 7. Pw-2 xxx, the father of the victim deposd that he knows the accused. In the month of February, 2019 his daughter was found talking to a boy. Some Adibashi people brought his daughter and handed her over to Gaonburah. There was a village bichar and his daughter was given in custody to the accused for the night. On the following day, he brought his daughter to their home. He was asked by people to put his thumb impression on a certain document.
- 8. In cross examination Pw-2 deposed that his daughter did not inform him that the accused committed any sexual misconduct with her. He does not know the contents of FIR.
- 9. Pw-3 xxx, the mother of victim deposed that in the month of February, 2019 his daughter was found talking to a boy. Some Adibashi people brought his daughter and handed over to Gaonburah. There was a

village bichar and his daughter was given in custody to the accused for the night. On the following day they brought their daughter to their home.

- 10. In cross examination Pw-3 deposed that his daughter did not inform her that the accused committed any sexual misconduct with her. She does not know the contents of FIR.
- 11. PW-4 xxx, victim, deposed that the informant is her father. About 7 months back, while she was talking to her friend Sanjib, some Adivasi people apprehended her and handed her to their Goanburah. Thereafter, they called the accused and handed her over to accused for night. She stayed at the residence of accused at night alongwith the wife and daughter of accused. On the following day she was handed over to her parents. She had a given statement before the Magistrate.
- 12. In cross examination Pw-4 deposed that accused did not misbehave with her.
- 13. Pw-5 Sri Thakur Hembrom deposed that about 6 months back he was informed that a Rajbongshi boy and a girl was found near a pond during night hours. He went to the place of occurrence and took the boy and a girl to the residence of Tarak Barman, Goanburah. He does not know what happened thereafter.
- 14. The evidence reproduced above is entirely contrary to what has been stated in the FIR and also in the statement made by the victim under Section 164 CrPC. The evidence on record does not implicate the accused

in any manner. He was handed over the custody of the victim by the village people and according to the testimony of the victim, accused did not misbehave with her at night. So being the evidence on record, there appears no materials for the commission of offence under Section 8 of the POCSO Act, 2012.

15. In the result, the point for determination is answered in negative.

ORDER

Accused Subhash Adhikary is acquitted of the charge under Section 8 of the POCSO Act and set at liberty forthwith.

His bail bonds are extended for six months.

Given under the hand and seal of this Court on this 11th day of December,2019.

Dictated by

Addl. Special Judge Kokrajhar Addl Special Judge Kokrajhar

<u>Appendix</u>

1. <u>Prosecution Exhibits</u>:- Nil

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1	Smti. Mina Adhikary
P.W.2	xxx, the father of victim
P.W.3	xxx, the mother of victim
P.W.4	xxx victim
P.W.5	Sri Thakur Hembrom

P.W.6 Sri Ganesh Roy

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4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Addl. Special Judge(FTC), Kokrajhar