IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>CCL</u>) <u>Case No.44/2018</u> (U/S : 4 of POCSO Act)

State
Versus
Pritam Sabar,
S/O Sri Keshab Sabar,
Vill- Dimakuchi TE (Line No.24),
PS-Dimakuchi, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri A. Basumatary, P.P., Udalguri

AND

For the accused: Sri M.C. Narzary, Advocate.

Evidence recorded on: 14.6.2019.

Argument heard on: 14.6.2019.

Judgment delivered on: 14.6.2019.

JUDGMENT

1. The prosecution case, in short, is that on 10.2.2018 the informant Smti. Sabitri Koya lodged an FIR with the Officer-in-charge of Dimakuchi PS alleging, inter-alia, that on 4.2.2018 religious ceremony was in the house of her brother-in-law where her victim daughter (real name is withheld, henceforth referred as the victim) was present. On 8.2.2018 her daughter informed her in the morning at about 6 AM that on the intervening night of 4.2.2018 and 5.2.2018 at around 1 AM the accused persons Pritam Sabor and Maso Munda induced her to go to the mini tea garden of Nilu Dey and at around 3 AM both the accused persons committed rape on her inside the tea estate and on the same day at around 5 AM the accused persons left her in front the gate of their house.

- 2. On the basis of the FIR police registered a case vide Dimakuchi P.S. case No.12/2018 U/S 4 of POCSO Act and investigated to it. On conclusion of investigation police laid the charge-sheet against the accused persons namely, Pritam Sabor and Mosa Munda U/S 4 of POCSO Act showing accused Pritam Sabor as juvenile.
- 3. It may be mentioned at this stage that the case against accused Moa Munda ended into acquittal after full trial in Special (POCSO) case No. 28/2018. However, the case against the other accused Pritam Sabar, who was a juvenile made over to Juvenile Justice Board for enquiry and trial but the Principal Magistrate, Juvenile Justice Board, Udalguri vide order dated 1.11.2018 transferred the case against juvenile/ child conflict with law, Pritam Sabar to this court being Children Court for his trial as an adult in view of Section 18(3) of the JJ Act,2015 having jurisdiction to try such offence. On receipt of the case from the Principal Magistrate, Juvenile Justice Board, Udalguri Special (CCL) case No.44/2018 was registered.
- 4. Whereupon having heard learned counsel of both the sides on the consideration of framing of charge and after perusal of the entire materials on the record, I found a prima-facie case to frame charge against the accused U/S 4 of POCSO Act and, accordingly, charge there under was framed and the charged so framed on being read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
- 5. To substantiate the case, prosecution examined as many as two witnesses which include the victim and informant cum mother of the victim. Ld. P.P. for the State submitted to close the evidence as the statement of informant and victim, who are the vital witness in this case stated nothing about the incident. So it would be fruitless excercise to summon the other witnesses.

On close scrutiny of the record including the statement of witnesses recorded so far, I am of the considered opinion that prosecution case would not improve even if other remaining witnesses are examined.

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.

Examination of accused U/S 313 Cr.P.C. is dispensed with.

- 6. In the light of the above perspective, the point for determination in the present case is set up and framed as:-
- (i) Whether the accused on 5.2.2018 at about 1 AM in the small tea garden of Nilu Dey at Dimakuchi under Dimakuchi PS committed penetrative sexual assault upon the victim, aged 13 years as alleged under Section 4 of POCSO Act?
- 7. I have heard arguments advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

- 8. Coming to the testimony of the victim (PW1), it transpires from her evidence that she has failed to support the broad substratum of the prosecution case. She has merely stated that her mother lodged the FIR with the police against the accused suspecting that the accused might have committed rape on her when she was attending the house of her uncle Sanjib Koya on the occasion of marriage ceremony. Her mother lodged the FIR as because she remained in the marriage house for the night without informing her mother. Her statement U/S 164 CrPC was recorded. In cross-examination she has reiterated that the accused did not commit rape on her on the day of occurrence.
- 9. PW2, Sabitri Koya is the informant of this case. Despite being the first informant this witness has totally disgraced from the material particulars of the case which is not inconformity with the first information report. Her evidence discloses in contradiction to the FIR to the fact that on the day of occurrence in

the evening her daughter went to attend marriage ceremony of one Sanjib Koya without informing her. On the next day in the morning two boys brought her daughter to her home. As her daughter was not found at home at night so she suspected that the accused who came to her house along with her daughter might have molested her. She has stated that her daughter on being asked only told her that the accused and the other boy did not molest her when she was present at the house of Sanjib Koya due to marriage ceremony. In cross-examination she has also empathically stated that she lodged the FIR against the accused merely on suspicion as he came to her house along with her daughter to keep her in her house when the marriage ceremony was over.

- 10. On consideration of the above discussed evidence on record, it is amply evident that there is no iota of implicating evidence on record to prove the guilt of the accused. Both the vital witnesses, the informant (PW2) and the victim (PW1) have failed to deliver consistent and cogent evidence as regards commission of rape inasmuch as the victim herself totally turned around from the material particulars of the case. The testimony of the victim (PW1) is also not at all consistent with her statement recorded U/S 164 Cr.P.C. Though the victim implicated the accused in her statement U/S 164 Cr.P.C. but she has totally resiled from such statement in her evidence by merely disclosing that the accused did not commit rape on her. Since statement of the victim U/S 164 Cr.P.C. is not a substantive evidence without corroboration from her oral account and, as such, in absence of implicating evidence in the testimony of the victim and her mother (PW2) such statement cannot be accepted to bring home the charge levelled against the accused.
- 11. Having found no legally admissible evidence on record from any of the witnesses, as such, I cannot help saying that the prosecution has failed to prove its case.
- 12. In the result, I am constrained to hold that the accused Pritam Sabar is not guilty U/S 4 of POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.

13. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 14th day of June,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.