IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.59/2019

U/S- 4 of the POCSO Act, 2012

State of Assam

-Versus-

Jamal Uddin,

s/o- Bilal Hussain

vill- Kaimari,

P.S- Kokrajhar,

Dist- Kokrajhar

-----Accused person

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor

-----for the State

Md. Abdur Rahim, Ld. Advocate

-----for the

accused

Date of evidence: 07.01.2020 and 21.01.2020.

Date of Argument: 24.01.2020

Date of Judgment: 24.01.2020

JUDGMENT

- 1. The Prosecution case in brief is that— on 14.07.2019 the informant—Lalita Kalita lodged an ejahar alleging inter alia that the accused person— Jamal Uddin showing some porn videos to her minor daughter since many days and one day, the accused called her to his room and he touch her vagina by opening her panty. Hence, the case.
- 2. On the basis of the said ejahar, North Guwahati P.S Case No. 93/2019 U/S- 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4 of the POCSO Act, 2012.
- 3. The case was duly transferred and this Court after hearing both the parties, framed charge U/S- 4 of the POCSO Act, 2012 against accused—Jamal Uddin. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as 5 (five) numbers of witnesses including the informant, the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINT FOR DETERMINATION:**

(I) Whether the accused person on 13.07.2019 committed penetrative sexual assault on the minor daughter of the informant and thereby committed an offence of penetrative sexual assault U/S-3 which is punishable U/S 4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides.
- 7. Before discussing the evidences on record, let us go through the definition of penetrative sexual assault which is defined in Section 3 of the POCSO Act, 2012.
- 8. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
 - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section 4 of the POCSO Act deals with punishment for penetrative sexual assault. It reads as — " Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which

shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."

- 9. Now let us go through the evidences on record.
- 10. PW 1 is the prosecutrix. She has stated that the informant is her mother. She knows the accused person—Jamaluddin. The incident took place about 7 months ago in the evening time. She stated that her mother was sitting in the veranda of our house and she was in the house of the accused person, who is their neighbor for watching cartoon videos on his mobile phone. Her brother—Jintu Kalita and the minor son of the accused were also watching with her. She stated that while the two boys tried to snatch the mobile phone, then it fell on the ground and was slightly damaged. Then, the accused and his wife scolded her parents by using slang language. Then, upon hearing her mother arrived and a quarrel ensued between them. Thereafter, her mother gave the case. Police sent her for her medical examination but her mother refused to get my medical examination and brought her before the Magistrate for recording her statement. Police recorded her statement. P.W.1 stated that she deposed before the Magistrate as tutored by some other person. Ext.1 is the statement and Ext. 1 (1 and 2) are her signatures.

In her cross examination, PW 1 revealed that accused is their close neighbor, who stays in an adjacent room in a rented house. The wife of the accused was at home at the time of occurrence.

11. PW 2, Lalita Kalita is the informant and the victim (P.W.1) is her daughter. Accused is known to her. She stated that the incident took place in the month of July, 2019 in the evening time. Victim was 11 years old at the time of occurrence. She stated that she was sitting in the veranda of their house and victim was in the house of the accused person, who is their neighbor for watching cartoon videos on his mobile phone. Her brother—Jintu Kalita and the minor son of the accused were also watching with her. While the two boys tried to snatch the mobile phone, then it fell on the ground and was slightly damaged. Then, the accused and his wife scolded her and her children by using slang language. Then, upon hearing the 'hullah', P.W.2

arrived and a quarrel ensued between them. Thereafter, P.W.2 gave the case. The FIR was not written by me and she do not know the contents of the ejahar. Police recorded her statement. Ext.2 is the FIR and Ext. 2 (1) is her signature.

In her cross examination, P.W.2 disclosed that accused is their close neighbor, who stays in an adjacent room in a rented house.

11. P.W.3, Sri Madan Kalita is the husband of the informant and father of the victim/prosecutrix. He stated that the incident took place about 6 months ago. Victim was 12 years old at the time of occurrence. He was not present in the house at the time of occurrence. Next day, he heard from his wife that victim was in the house of the accused person, who is our neighbor and watching cartoon videos on his mobile phone. Her brother—Jintu Kalita and the minor son of the accused were also watching with her. While the two boys tried to snatch the mobile phone, then it fell on the ground and was slightly damaged. Then, the accused and his wife scolded his wife and children by using slang language. Thereafter, she gave the case. Police did not record his statement.

In his cross-examination, P.W.3 did not see the incident by himself.

- 12. P.W.4, Sri Biren Bhuyan know the informant of this case and also the accused person—Jamaluddin. Victim is also known to him. He do not know the date of occurrence. He only heard that there was a fight between the informant and the accused over a mobile phone in which the children were watching videos.
- 13. P.W.5, Sri Trailokya Bhuyan know the informant of this case and also the accused person—Jamaluddin. Victim is also known to him. He deposed that the incident took place three months ago. He stated that the informant and the accused were their tenants. He stated further that on the relevant day, the victim along with other children were playing with the mobile phone of the accused. The mobile phone somehow slipped from the hand of the victim and fell down on the ground and got damaged for which the accused scolded the victim and a quarrel ensued between both the parties.

- In this instant case, apart from the victim (P.W.1), there are no eye witness to the occurrence. Other P.Ws are hearsay witnesses. Now, in this instant case, there is no allegation by the victim girl of any forceful sexual intercourse upon her by the accused person. The victim (P.W.1) made it clear in her evidence that she was in the house of the accused person, who is their neighbor for watching cartoon videos on his mobile phone. Her brother—Jintu Kalita and the minor son of the accused were also watching videos on the phone with her and while the two boys tried to snatch the mobile phone, then it fell on the ground and was slightly damaged. Thereafter, the accused and his wife scolded her parents by using slang language. Upon hearing the shouts, victim's mother arrived and a quarrel ensued between them. But the accused did not do any bad act with her. So, the offences U/S- 4 of the POCSO Act is not at all attracted in this instant case.
- 15. It is a cardinal principal of criminal law that prosecution case has to stand on its leg and offence has to be proved against the accused beyond all reasonable doubt.
- 16. On scrutinising the evidence on record and considering the entire aspect of the matter, I find that the prosecution has failed to establish that the accused committed sexual intercourse with the victim. Hence, the accused is entitled to be acquitted under the benefit of doubt.
- 17. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Jamal Uddin. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S- 4 of the POCSO Act, and set at liberty forthwith.
- 18. His bail bond shall remain in force for next 6 (six) months U/S-437(A) Cr. P.C.
- 19. The case is disposed of on contest.
- 20. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 24^{th} day of January, 2020.

Special Judge, Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

PW 1 is the prosecutrix

PW 2, Lalita Kalita

P.W.3, Sri Madan Kalita

P.W.4, Biren Bhuyan

Prosecution Exhibit

Ext.1 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Ext.2 is the FIR

Special Judge, Kamrup, Amingaon