IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl POCSO Case No. 57/2018

u/s 4 of POCSO Act, 2012

State of Assam

-vs-

Sri Nakul Bhuyan

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.



Committed by:

Learned SDJM(M), Biswanath Chariali

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P

For the defence : Mi

: Mr. T. Ahmed, learned Legal Aid Counsel.

Date of recording Evidence: 11.06.2019.

Date of Argument

: 11.06.2019.

Date of Judgment

: 11.06.2019.

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 04.12.2018 the informant namely Sri Banat Karmakar lodged an FIR with the OC, Gingia PS stating inter alia that on the previous day at about 4 PM his 12-year-old daughter (name is withheld) was enticed by the accused by giving her a biscuit and taken her to a place near Joyguru Temple, where he committed rape on her. The accused left his daughter at that place after commission of the offence. Later, her mother searched her out from that place and could know about the incident from the victim.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation the police submitted charge sheet against the accused person u/s 4 of the POCSO Act. After production of the accused from custody before this court, as the accused expressed his inability to engage a counsel of his choice to defend him, the learned legal aid counsel was appointed to defend the accused at the expense of the state. After copies

Add. Sessions Judge.

of the relevant documents being furnished to the accused and upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed an offence u/s 4 of the POCSO Act, the charge was accordingly framed against him, which on being read over and explained, he pleaded not guilty.

3. During trial, the prosecution examined the informant and the alleged victim as PW1 and PW2 respectively. Looking into the evidence as adduced by both these vital witnesses, taking note of the medical examination of the victim, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the materials on record, the prosecution evidence was closed. As no incriminating evidence was found against the accused, the examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.



Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim who was below the age of 18 years?

Discussion, Decision and Reasons thereof

- 4. PW 1 is the informant Banat Karmakar. He stated that the incident took place about 6-7 months ago. According to him, on that day during day time, he was not present in his house. His wife Banbashi Karmakar had gone to her work place and his daughter -victim was alone in the house. He stated that on the next day of the incident his wife told him that the accused had committed 'kharap kam' on their daughter. He stated that his wife could know about the incident from the villagers. Thereafter, the women folk of the village caught the accused and handed him over to police. He thereafter, lodged the FIR. He stated that when he later asked the victim about the incident, she denied of the accused committing any 'kharap kam' on her. He stated that the police had got his daughter medically examined. In his cross-examination, he stated that before lodging of the FIR, he did not enquire about the incident from his daughter. He had lodged the FIR only after the people started the beating the accused. He also stated that he lodged the FIR out of misunderstanding.
- 5. PW 2 is the victim. She stated that the accused did not misbehave her and she does not know as to why her father had lodged the FIR against the accused. She proved her statement recorded u/s 164 CrPC as Ext. 1. In her cross-examination, she stated that the accused rebuked her on that day as she was waiting on the road at noon. He had asked him to go to her house and as she out of fear ran towards her house, the women folk standing nearby thought otherwise.

Addi. Sessions Judge
Addi. Sessions Judge
Addi. Sessions

Spl. POCSO Case No. 57/2018

6. Thus from the evidence of both these vital witnesses, we do not find any incriminating evidence against the accused on the offence charged against him. Further, as we take judicial notice of the medical examination report of the victim, we find that the doctor examining her did not find any injury over the private parts of the victim. Thus from the evidence on record, we do not find any material against the accused to convict him on the offence charged against him. The prosecution has failed to prove its case. As such, I acquit the accused from the offence charged against him and set him at liberty forthwith. As the accused has faced trial from custody, the Jail authorities be directed to release the accused forthwith, if he is not required in any other case. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 11th day of June, 2019.

(D. BORA) Session Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur Assam. Addl. Sessions Junga

Biswanath Chariali, Sonitpur



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Banat Karmakar

PW2- Victim

Exhibits proved by the prosecution witnesses:

Exhibit-1: Statement of the victim u/s 164 CrPC



Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addl. Sessions Judge Biswanath Chariati, Sonitpur