IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora,

Special Judge, Udalguri, Assam.

Special (POCSO) Case No. 16/16. U/S 448 IPC R/W Sec.10 of the POCSO Act.

State of Assam......Complainant.

Vs

Danesh Ali..... Accused.

Appearance:-

For the Prosecution : Mr. P.Baskey, Public Prosecutor.

For the defence : Mr.J.K. Brahma, Advocate.

Date of argument : 16.11.2017.

Date of Judgment : 16.11.2017.

<u>JUDGMENT</u>

The case of the prosecution, in brief, is that on 3.5.16 at about 11 AM while the daughter of informant Miss Lipika Das, aged about 11 years, was alone at home the accused person came to their house and enquired whereabouts her parents. While said Lipika Das informed the accused that her parents went out somewhere then the accused grabbed her from behind and touched her private parts. The victim somehow rescued from the clutches of accused by ran away. On receipt of the FIR Panery PS Case No.33/16 u/s 448/506 IPC R/W Section 10 of the POCSO Act was registered. Police held usual investigation. At the conclusion of investigation police laid charge-sheet against accused for the offence punishable u/s- 448 IPC R/W Sec.10 of the POCSO Act.

2. This court furnished copy of the necessary papers to the accused person. Upon perusal of materials on record and hearing submission advanced by the parties this court found a prima-facie case to frame charge against the

accused for the offence punishable u/s-448 IPC R/W Sec.10 of the POCSO Act and charge was framed accordingly. Charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. In order to bring home the guilt of the accused person prosecution examined as many as six witnesses. After completion of prosecution evidence, ld. P.P. submitted for closure of evidence on the ground that the complainant, victim in this case nowhere supported any materials of alleged charge. On close scrutiny of the statement of complainant, victim and other witnesses could reveal any material against the accused as to the alleged charge. 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.

Accused is examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused put before him for his explanation where he denied the evidence and allegation and declined to give defence evidence.

4. I have heard argument advanced by the learned counsel of the parties and carefully gone through the evidence and other materials on record.

5. **POINTS FOR DETERMINATION**:

- (i) Whether the accused person on or about 3.5.16 at about 11 AM at village No.1 Geruajhar under Panery PS, entered into the house of informant Smti. Parbati Das with intent to commit offence?
- (ii) Whether the accused on the same day, time and place committed aggravated sexual assault upon Miss Lipika Das, aged about 11 years?

DECISION AND REASONS THEREOF:

6. Prosecution examined victim as PW4. She stated that 1 ½ years ago one day the accused came to their house while her parents were absent in search of betel-nut tree. While he did not find betel-nut tree he became angry and scolded her. When her mother came home she told her parents. Out of anger her mother lodged the ejahar.

In cross-examination this witness stated that no incident of sexual assault was committed on her daughter by the accused.

7. PW.5, Smti. Parboti Das is the mother of the victim and informant in this case. She deposed that 1 ½ years ago one day the accused came to their house while she and her husband were absent in search of betel-nut tree. While he did not find betel-nut tree he became angry and went away. Her daughter informed her and her father. No incident of sexual assault was committed on that day. Out of anger she lodged the ejahar. Ext.3 is the ejahar. Ext.3(1) is her signature.

In his cross-examination he stated that though he was called by his wife but she did not say anything about the incident. The victim was sent for medical examination but she was not admitted. He did not see the incident.

- 8. PW6, Sri Amar Das is the father of the victim. He deposed the same statement as of PW5.
- 9. PW1, Sri Subal Sutradhar stated that he knowsnothing about the occurrence.
- 10. PW.2, Sudhangshu Das stated that the occurrence took place around 9/10 months ago. His house is situated at a distance of about 2 KM from the house of informant, Parbari Das. At the material period he was the president of peace committee of Geruajhar area. He is also the president of the chamber of commerce of No.1 Geruajhar. He owns a tea stall at Geruajhar chowk. At

around 4.30/5 PM informant Parbati Das came to his tea stall and informed him that while all her family members were not present at their home accused Danesh Ali entered into their house at about 1/1.30 PM and pulled the wearing garments of their daughter. The victim girl was studying in class VI. She asked him to call accused Danesh Ali then and there to settle the matter. She disclosed that she would assault accused Danesh Ali. He asked informant Parbati Das to come in the next morning so that a 'Bichar' could be held in presence of other persons of the locality. Thereafter at around 10.30 PM informant asked him over phone whether 'Bichar' would be held. He then replied her that 'Bichar' would be held in the next morning. She then told him that no 'Bichar' is required since she had taken another step.

- 11. PW3, Pradip Choudhury stated that the occurrence took place around one year ago. Babul Das informed him over phone that accused Danesh Ali misbehaved the minor girl of informant Parbati Das and asked him to come to the police station to help them. Babul Das is the neighbour of Parbati Das. Accordingly he came to the police station. Police already arrested accused Danesh Ali and he saw accused Danesh Ali at the police station. He saw Parbati Das and the victim girl at the police station. Police seized one birth certificate of the victim girl on being produced by informant parbati Das. At that time he was present there. Ext.1 is the seizure list and Ext.1 (1) is his signature. Material Ext1 is the seized birth certificate of the victim girl.
- 12. In the instant case the informant as well as the alleged victim girl did not support the case of the prosecution on any material point. It is in the evidence of the victim that accused did nothing with her. Informant, PW5 also stated that at the time of incident she was not present at home. When victim informed her that accused scolded her then out of anger she lodged the ejahar. There is no whisper in the evidence of informant and victim that the accused person committed the alleged crime. They have not implicated the accused in the alleged commission of offence. Other PWs also silent about the

incident. The ingredients of the offence punishable under Section 10 of POCSO Act are totally missing in the instant case.

- 13. In view of the foregoing discussion, I find and hold that the prosecution has miserably failed to prove its case against the accused person and hence accused is liable to be acquitted.
- 14. In the result, accused is acquitted of the charge and set him at liberty.

Given under my hand and the seal of this court on this the 16^{th} day of November /2017.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge,