IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.19/2018

State of Assam

Versus

Md Hasmatullah Sk. Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr K.M.Choudhury

Evidence recorded on : 12.7.18, 01.8.18, 04.9.18 & 04.10.18

Argument heard on : 04.10.2018

Judgment delivered on: 04.10.2018

JUDGEMENT

- 1. The prosecution story in brief is that on 18.3.2018 the informant S.I. Jiten Phukan lodged the first information report with the allegation that on 16.02.18 at about 2.30 P.M. the accused Hasmatullah Sk., head-Master of Lalmati Goraimari L.P. School committed rape on a minor girl who is student of his school. Hence, the first information report.
- 2. On receipt of the first information report in Bogribari P.S., a case has been registered under Bogribari P.S. case No.27/2018 under section 4 of Protection of Children from Sexual Offices Act and case was endorsed to S.I. Rustam Ali Ahmed for investigation. During investigation the I. O. visited to

the place of occurrence and recorded the statement of the witnesses, recovered the victim girl, medically examined her and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 4 POCSO Act against the accused Hasmatullah Sk. Relevant copies also furnished to the accused and the charge under section 4 of POCSO Act was framed against the accused finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. The prosecution side examined as many as 13 (thirteen) number of witnesses including the informant and the victim as follows:-

PW 1 S.I. Jiten Phukan (Informant),

PW 2 Md Abdul Hannan Sk.,

PW 3 Miss Kapina Begum (victim),

PW4 Md Aizuddin,

PW5 Md Jalil Sk..

PW6 Md Sahidul Islam,

PW 7 Mosstt Samiran Bibi,

PW8 Md Kalimuddin Sk.,

PW9 Sri Jayanta Kr.Brahma,

PW10 Smti Dipali Brahma,

PW11 Mosstt Omisa Bibi,

PW12 Mosstt Mamtaz Begum and

PW13 Mosstt Romisa Khatun.

4. The accused person took the plea of total denial while recording his statement under section 313 of Cr.P.C., and declined to adduce any evidence.

5. **Point for determination:**

Whether the accused person committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. The first information report of this case was lodged by SI Jiten Phukan at Bogribari Police Station with the allegation that the accused Hasmatullah Sk., head-Master of Lalmati Goraimari L.P. School committed rape on a minor girl who is student of his school. The villagers from Lalmati gave a complaint before the Superintendent of Police, Kokrajhar and accordingly as per the direction of the Superintendent of Police, Kokrajhar he made GD Entry and then visited the place of occurrence along with his staff and thereafter recording the statement of the witnesses the first information report was lodged by the informant. But, surprisingly the parents of the victim i.e. PW7 and PW8 did not utter anything against the accused person rather both PW7 and PW8 deposed that they do not know as to why their daughter was taken to Police Station.
- 8. Coming to the evidence of the victim, it reveals that she deposed in her evidence as PW3 and her evidence was recorded after asertaining her capability of understanding. As per her on the day of the incident the accused who is Head-Master of her school scolded her and also beat her as she was remained absent in the school and except that incident no other incident took place with her.
- 9. PW1, informant of this case is also police personnel and he simply lodged the first information report on the basis of memo. issued by the Superintendent of Police, Kokrajhar. He made GD Entry and endorsed SI Rustom Ali Ahmed for investigation. However, he stated in his evidence that

he lodged the first information report as he found the incident is true after recording the statement of the witnesses. Thus, it is seen that PW1 has no personal knowledge in respect of the incident took place with the victim though he stated that after recording the statement of the witnesses he filed the first information report.

- 10. PWs2, 9, 10, 11, 12 and 13 did not say anything about the incident and they do not know as to why the Head-Master of the school (accused) was arrested by police. Out of these witnesses PWs 9 and PW13 are Assistant Teachers of the said school. PWs10, 11 and 12 are mid-day meal cooks of the said school. So it is very obvious for these witnesses to have knowledge in regard to the incident alleged against the accused or who is headmaster of their school. But, all these witnesses denied the prosecution version and they did not support the prosecution case. More so, PW7 and PW8, the parents of the victim also did not support the prosecution case and as per them no incident of rape etc. had happened with their daughter.
- 11. PWs4, 5 and 6 however deposed in their evidence that they heard about the incident of rape on the victim girl by the head-master of the said school. As per PW4 he was asked by one Isamuddin to go to the police station saying that the accused committed rape on the daughter of Kalimuddin. As per him, the father of the victim lodged the first information report at the police station. But, from his cross evidence it reveals that he has no personal knowledge about the occurrence and he also does not know as to who lodged the first information report. PW5 also deposed that his father informed him about the incident of rape with the daughter of Kalimuddin and accordingly he visited to the police station. Thus, PW5 is also hearsay witness and he heard about the incident from his father and not from the victim or her father. Again PW6 deposed that he heard about the incident from PW5 but, he did not visit to the police station.

- 12. So these three witnesses i.e. PWs4, 5 and 6 deposed that they heard about the incident of rape with the victim, daughter of Kalimuddin. But, except these three witnesses no other witnesses have uttered anything about the commission of rape by the accused who is student of his school. These three witnesses are not employees of the school to have any personal knowledge about the incident which took place in the school. So, their evidence have to be corroborated with the other witnesses who are employees or teachers of the school and only on the basis of their hearsay evidence, the accused cannot be convicted under section 4 POCSO Act when the victim herself did not support the prosecution case and at the same time her parents also did not utter anything against the accused.
- 13. The defence took plea that the accused has been falsely implicated in this case as he prevented PWs4, 5 and 6 from doing some misdeeds in the school. The defence also put suggestion to the PWs4, 5 and 6 that a false case is lodged against the accused with their initiative only to harass the accused for their previous enmity. It is also suggested to PW4 that he along with other associates lodged the case as the accused being head-master of the school refused to give rice meant for mid-day meal of the school of the students. The defence version cannot be outrightly rejected as testimonies of the prosecution witnesses it is seen that except PWs4, 5 and 6 none of the witnesses specially the victim and her parents did not support the prosecution case.
- 14. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Hasmatullah Sk. under section 4 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

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15. The judgment is delivered in the open court and given under my hand and seal of the court on this 04th October/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge,

Kokrajhar