

DISTRICT- CHARAIDEO.

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:- Syed Imdadur Rahman, AJS.

SPECIAL JUDGE

The 10th day of June, 2019.

SPECIAL (P) CASE NO: 02 OF 2019

Under Section

8 of the Protection of Children
from Sexual offences Act, 2012.

State of Assam

-Versus-

Sri Kishore Murari

..... Accused Person.

F.I.R was lodged on :::::::::: 20.10.2018.

Charge framed on ::::::::: 02.04.2019.

Argument Heard on ::::::::: 29.05.2019.

Judgment Delivered on ::::::::: 10.06.2019.

Special Judge Charaideo, Sona:



JUDGMENT

In this case the accused person is facing trial under section 8 of the Protection of Children from Sexual Offences Act, 2012.

- 1. The case of the prosecution is that, on 19/10/2018 at 03:30 P.M, while the sister of the informant and one of her friend were coming towards Rangabri, then, the accused tried to harass them, sexually.
- 2. Later on, after lodging of the 'ejahar' of this case by the informant, a case was registered in this regard, before the Borhat Police station, bearing its P.S case no 44/18. Police after investigation forwarded charge sheet U/S 8 of the Protection of Children from Sexual Offences Act, 2012 read with section 324 I.P.C against the accused person. Thereafter, case was committed and charge U/S 8 of the POCSO Act, 2012 was framed. The charge was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Prosecution examined three witnesses.
- 3. The accused person was examined U/S 313 Cr.P.C, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

Points For Determination in this case are:-

i) Whether the accused on 19/10/2018, at 03:30 A.M. committed sexual assault on the sister of the informant and her friend, who was a minor at that time?

5. DISCUSSION DECISION AND REASONS FOR THE DECISION:

Let us now, discuss evidences on record, concerning the point for determination of this case. In this case one of the alleged victim was examined as P.W2; the P.W2 in her evidence deposed that, on the day of last 'Durga Puja', they went with the accused to see the idol. That, her brother lodged this case in vain. In





the cross examination this P.W deposed that, nothing happened. That, accused may be acquitted.

- 6. In this case the other most material witness is the C.W.1 i.e. being, one of the alleged victim of this case. She in her evidence deposed that, the incident occurred in the year 2018. That, they were going towards their sister's house and accused accompanied them. That, her brother lodged the case as he saw the accused accompanied them. In the cross-examination this P.W. deposed that, no incident took place. That, accused has no guilt.
- 7. The P.W 1 is the informant of this case. He in evidence deposed that, the incident took place in Last 'Durga Puja'. In the cross examination this P.W deposed that, no incident took place as mentioned in the 'ejahar'.
- 8. Here, in this case the accused is facing trial primarily under the Protection of children from Sexual Offences Act, 2012.

Section 29 of the act is as follows:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and Section 9 of this act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Here as per the procedural law the trial court shall presume the accused guilty of the offence he is facing trial, unless disproved by him.

Section 4 of the Indian Evidence act 1872 defines the term "shall Presume" as follows: Whenever it is directed by this act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

Now, behind this background, we have to come to a conclusion in this case.

9. I have scrutinized evidences of the witnesses of this case and found the followings :::





- a) Victims never adduced any evidence which may attract any of the points for determination, neither the informant.
- b) The informant failed to support the F.I.R he lodged. The informant never adduced any evidence which specifically corroborated either the evidence of the alleged victim or the case of the prosecution. All material witnesses in their cross examination deposed that, no incident took place. Both alleged victims deposed that accused has no guilt.
- 10. Here in this case the accused is facing trial under section 8 of the P.O.C.S.O act, but the discussions made above shows that there is no evidence on record basing on which, prosecution can bring home the charge against the accused, rather through the cross examination of P.Ws, accused disproved the prosecution case. Here alleged victims themselves failed to support the case of the prosecution. Here the alleged victim even failed to support the statement she made under section 164 Cr.P.C.
- 11. I have considered the evidences on record, which includes the evidence of the prosecutrix and I find that, there is no iota of evidence to bring the accused person within the ambit of section 8 of the POCSO Act, 2012 as the accused disproved the prosecution case.
- 12. This being the position of this case, in opinion of this court, prosecution has failed to prove the case against the accused person and accordingly the accused Sri Kishore Murari is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision 437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 10th day of June 2019.

(S.I.Rahman)

Additional Sessions Judge.

Charaideo, Sonari



Appendix

Prosecution Witnesses.

Sl. 1---- Prosecution Witness 1 ---Sri Iliyas Lagun.
Sl. 2---- Prosecution Witness 2 & CW1-The alleged victims.

Prosecution Exhibits.

Sl. 1--- Ejahar
Sl. 1(1)- Signature of the informant i.e. P.W1.

<u>Defence witness.</u>

Nil.

Defence Exhibit.

Additional Sessions Judge Charaideo, Sona.