IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora, Special Judge,

Udalguri, Assam.

Special (POCSO) Case No. 14/16. U/S 8 of the POCSO Act.

State of Assam......Complainant.

Vs

Osman Gani @ Osman Ali...... Accused.

Appearance:-

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

For the defence : Mr. R.Khaklari, Advocate.

Date of argument : 6.9.2017.

Date of Judgment : 8.9.2017.

JUDGMENT

The case of the prosecution, in brief, is that on 21.3.15 an FIR was lodged with Bhakatpara Out Post by informant, Sahidul Islam stating, inter-alia, that on 14.3.15 at about 11 PM, while all the inmates of his house were in asleep, accused Osman Ali after cutting the door of his dwelling house tried to commit bad work with his 14 years old daughter (hereinafter referred to in short as "X"). Then the girl shouted. On hearing hulla neighbouring people came and caught Osman Ali red-handed. Thereafter, father and elder brother of Osman Ali took Osman Ali with a promise to be held 'Bichar'. On the next day meeting was held but Osman Ali and his father did not attend in the meeting. Hence, delay is caused in lodging the ejahar. On receipt the ejahar the In-Charge, Bhakatpara Out-Post by giving GDE No.230 dated 21.3.15 forwarded the same to Kalaigaon Police Station for registering a case and he himself took the charge of investigation. Accordingly, kalaigaon PS Case No.36/15 u/s 457/376/511 IPC was registered. Police held usual investigation. At the conclusion of investigation police laid charge-sheet against accused for

the offence punishable u/s 457/376/511 IPC added Section 6/8 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 Osman Gani @ Osman Ali for the offence punishable u/s-8 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. To substantiate the case, prosecution examined as many as nine numbers of witnesses. After completion of prosecution evidence accused person examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for his explanation, where he denied the evidence and allegations 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**:

Whether the accused person on or about 14.3.15 at about 11 PM at village Marabegapar under Kalaigaon PS committed sexual assault upon said "X", aged about 14 years?

DECISION AND REASONS THEREOF:

6. Prosecution examined informant, Sahidul Islam as PW6. He stated that he knows accused Osman Ali. The incident took place about 2 years ago at about 11 PM. At about 11 PM the accused talked with his daughter "X". When he raised "who," the accused fled away. He informed VDP secretary. VDP secretary called the father of accused. But they did not come. A bichar was held in the village. But the accused did not appear in the bichar. As such he lodged ejahar and therefore, there is delay in lodging FIR.

In cross-examination this witness stated that they have only one house and there is one entrance. At night they bolted the door. They used to live in the same house. He does not know if his daughter and accused had love affairs.

7. PW.1, Dr. Liladhar Brahma stated that on 26.3.15 he was serving as a medical In-charge of Bhakatpara State Dispensary. On that day at about 11.10 AM he examined the victim girl "X" on police requisition in connection with Bhakatpara P.P. case. The victim was escorted by WBC/N.Kalita and WHG/15 Rupali Devi. The patient/victim gives the history of attempt to rape on 14.3.15 at about 11 PM. On examination no injury was detected.

Doctor remarks that no injury or rape sign or molestation is detected.

In cross-examination doctor stated that case number is not mentioned in his report. The report available in the record is a carbon copy.

8. PW2, Kajimuddin Mandal stated that he knows accused Osman Gani. He also knows informant, Sahidul Islam. He is his son-in-law. Victim "X" is his grand daughter. The incident took place about one year ago. The occurrence took place at about 11 PM. The occurrence took place in the house of his son-in-law i.e. the informant. His house is situated at a distance of about 200 meters from the house of informant. At the time of occurrence he was at his home. After about ½ an hour of the occurrence his son-in-law (informant) came to his house and asked to accompany him to his house. Accordingly he went to the house of the informant. Informant told him that the accused person entered into his house and had some discussion with the victim girl. Police recorded his statement. A 'Bichar' was held in the village regarding the occurrence but the accused did not appear in the 'Bichar'.

In cross-examination this witness stated that he did not find the accused person at the place of occurrence. He knows about the affairs between the victim Rejina and the accused person.

9. PW3, Miss Salema Khatoon stated that she knows accused person. Accused is her neighbour. Informant, Sahidul Islam is her father. Victim "X" is her younger sister. The incident took place about one year ago. The occurrence took place at our house at about 11 PM. At the time of occurrence she alongwith her younger sister, "X" were sleeping in the same bed. She was

in deep sleep. On that night itself when she woke up she came to know from her parents that accused person entered into their room. She came to know from her parents that Osman had love affairs with "X". She saw Kajimuddin (PW2), Ramjan Ali and her parents having some discussion over the matter. After the incident said Ramjan Ali expired. She does not know how the accused enter into their room.

In her cross-examination she stated that there is wooden door in their house. The room in which they were sleeping was closed from inside.

10. PW4, Julfikar Ali stated that he knows informant, Sahidul Islam. Victim "X" is his niece. Informant Sahidul Islam is the father of the victim "X". Informant Sahidul Islam resides in his same courtyard. The incident took place about one year ago. At night at about 11 PM he heard hulla in the house of the informant. He then proceeded to the house of the informant. The parents of "X" scolding her stating as to why accused came to their house. He came to know from the mother of "X" that at the time of occurrence accused came to their house.

In his cross-examination he stated that he did not see the accused at the place of occurrence. There was love affair between accused and "X". He came to the house of the informant about ½ an hour after the incident.

11. PW.5, Musstt. Jahura Khatoon, the mother of the victim stated that accused Osman Ali is her neighbour. The incident took place about one year ago. The occurrence took place at about 11 PM. While she was sleeping in her room she heard some conversation in between accused and her daughter "X" who were in a separate room. As soon as she got up from bed and proceeding to the room of "X". Accused hurriedly came out of their house. She saw the accused person coming out of her house from behind. She asked her daughter as to the person who came to her room. Initially she did not disclose the name of the accused person but subsequently she told them that accused came to her room. At the time of occurrence her daughter was aged 14 years.

In cross-examination this witness stated that it is known to them that there was love affair between the accused and "X". There is single entrance in their house. The said entrance was closed from inside. At the material time electric light was off in the house. She did not see the face of the accused at

the material time. Initially her daughter did not disclose the name of the accused who came to her room but subsequently on their insistence she told them that the accused came to her room.

- 12. PW7, Musstt. Hajera Khatoon stated that she knows accused Osman Ali. The incident took place about 2 years ago. On the day of occurrence at night mother of "X" called her to their house. She saw that one person fled away. She could not identify the person.
- 13. PW9 is the victim "X". She stated that she knows accused Osman Ali. The incident took place in the year 2015. On the day of incident at night at about 12 0'clock night she talked with the accused. Her father saw them and raised hue and cry. The neighbouring people came. On the next day meeting was held. Local people advised them to lodge ejahar. Accordingly her father lodged ejahar. Accused did not commit rape on her. She was produced before the court for recording her statement u/s 164 Cr.P.C. Magistrate recorded her statement. Ext.2 is the statement. Ext.2(1) and 2(2) are her signature.

In cross-examination she stated that accused did not commit rape on her. They had love affairs.

- 14. PW9, Ajoy Goswami is the scribe of the ejahar. He stated that as per version of the informant he wrote the ejahar Ext.1. Ext.1(1) is his signature.
- 15. I have scanned the evidence of PWs.
- 16. In the instant case the informant as well as the alleged victim "X" did not support the case of the prosecution on any material point. It is in the evidence of "X" that accused did nothing with her. Informant, PW6 also stated that on the day of occurrence at about 11 PM the accused talked with his daughter "X". When he raised "who," the accused fled away. PW5, the mother of the victim stated that she heard some conversation in between accused and her daughter "X" who were in a separate room. As soon as she got up from bed and proceeding to the room of "X". Accused hurriedly came out of their house. PW2, PW3, PW4 and PW7 only heard about the incident. Medical report of the victim shows no injury or rape sign or molestation is detected. Victim has not supported the prosecution.

17. The statement of victim is also silent as to any of the ingredients of U/S 8 of POCSO Act. There is no any evidence that accused commits any penetrative sexual assault to the victim that (a) accused penetrate his penis to any extent into the vagina, mouth, urethra and anus of a victim (child) or makes the victim (child) to do so with accused or any other person., (b) accused insert to any extent any object or a part of the body not being the penis into the vagina, uirethra or anus of the victim or makes the child to do so with him or any other person or (c) accused manipulates any part of the body of the victim so as to cause penis into the vagina, urethra or anus of the victim or makes the child to do so with him or any other person or (d) accused applies his mouth to the penis, vagina, urethra or anus of the victim or makes the child to do so to such person or any other person. Under such circumstances, prosecution has failed to prove the alleged charge U/S 8 of the

- 18. As such, I have, therefore, no hesitation to hold that accused is entitled to get benefit of doubt. As such, acquit him and set at liberty forthwith.
- 19. 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 8th day of September /2017.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge, Udalguri.

POCSO Act.