IN THE COURT OF THE SPECIAL JUDGE :::::: NALBARI

Present: Smti Sharmila Bhuyan

Special Judge Nalbari.

Spl (P) CASE NO: 32/17

u/s-323 IPC R/W section 12 of the POCSO Act.

State of Assam

-Vs-

Sri Sadananda Kalita.

S/O-Late Kanteswar Kalita.

R/o, Vill-Haribhanga (Pachim Bhoira),

PS-Tihu, Dist-NalbariAccused person

Appearance:-

For the prosecution : Mr. K. Sarma, Special PP
For the defence : Mr. A. Mazid, Advocate.

Date of institution of the case : 10/06/17.

Date of framing charge : 26/09/18.

Date of evidence : 08/03/19 & 15/06/19.

Statement of accused recorded : 27/11/19.

Date of Argument : 27/11/19.

Judgment Delivered : 11/12/19.

JUDGMENT

1. The case of the prosecution as revealed from the ejahar lodged by Smt. Rita Kalita W/O- Sri Sadananda Kalita of village Haribhanga (Paschim Bhoira) is that accused Sadananda (her husband) tried to commit sexual assault with her daughter Miss 'X' from many days ago and harassed her by using slang language. On 09/06/17 at 10:30 pm her husband assaulted her for restraining him from committing sexual harassment to her daughter. The accused also pulled her daughter towards dark place but somehow she saved her daughter from the clutches of her husband. Hence, the case.

- 2. On receipt of the ejahar O/C Tihu PS registered Tihu PS case no.82/17 u/s-325 IPC r/w sec. 8/12 of the POCSO Act and entrusted SI K.C Sarma with the investigation. During investigation, he visited place of occurrence, recorded statement of the informant, victim and other witnesses, drawn sketch map of the place of occurrence and after completion of investigation submitted charge sheet against the accused Sadananda Kalita u/s-323 IPC and section 12 of the POCSO Act.
- 3. On receipt of the charge sheet my then learned predecessor took cognizance and issued process to the accused and after furnishing copies to the accused, framed charge u/s-323 IPC read with section 12 of the POCSO Act against the accused Sadananda Kalita and when charges are read over and explained to the accused he pleaded not guilty and stood for trial.
- 4. In order to prove the charge against the accused person, prosecution altogether adduces evidence of 4 numbers of witnesses including informant, victims. and exhibited 5 numbers of documents. PW-1, Miss 'X', PW-2, Smt. Rita Kalita, PW-3, Sri Mrigen Kalita and PW-4 Dr. Nripen Das. Ext-1 Statement of victim u/s-164 CrPC, Ext-2 Seizure list, Ext-3 Ejahar, Ext-4 Medical report and Ext-5 also medical report. After closures of the evidence of the prosecution, statement of the accused Sadananda Kalita recorded u/s-313 Cr.P.C and accused plea is total denial however he declined to adduce evidence in support of his plea of denial.

5. **POINTS FOR DETERMINATIONS ARE:**-

- (i) Whether accused Sadananda Kalita on 09/06/2017 at about 10:30 pm at Haribhanga (Paschim Bhoira) village under Tihu PS voluntarily caused hurt to Miss Rita Kalita?
- (ii) Whether accused Sadananda Kalita on 09/06/17 and since long back at Haribhanga (Paschim Bhoira) village under Tihu PS committed sexual harassment upon his minor daughter Miss 'X', aged about 16 years?

DISCUSSION, DECISION AND REASON THEREOF:

- 6. I have heard argument of both sides. Scrutinized evidence and material on record. The prosecution charge against the accused Sadananda Kalita is u/s-323 IPC and section 12 of the POCSO Act. Therefore, prosecution must bring on record that accused voluntarily caused hurt on the person of Miss 'X' and her mother and did any act, utter word, show picture with sexual fervor and sexual intent.
- 7. Learned defence counsel contended statement of PW-1, the victim of the case and statement of her mother and brother not show accused using any words showing any picture with sexual fervor to PW-1 and there is not a single ingredients coming out against accused to hold him guilty u/s-12 of the POCSO Act,2012. He further contended voluntarily causing hurt not coming up and fighting is due to alcoholic nature of the accused which accused now gave up and this is not fall under voluntarily causing hurt to PW-1 and her mother, the wife of the accused. There was not criminal intention that may be due to consumption of alcohol.
- 8. The prosecution charge against the accused Sadananda Kalita is voluntarily causing hurt to Smt. Rita Kalita and sexual harassment upon Miss 'X'. PW-1 Miss 'X' in her evidence testify that accused is her father and informant is her mother and she was 15 years old at the time of incident which took place two years back. Her further evidence is that her father was alcoholic person and he used to beat her mother and rebuked her by using slang words and prior to the incident she was staying with her mother so her father bring them from Guwahati with a promise that he will not rebuke them and will not fight with her mother. On the date of incident her father drank, rebuked her mother using slang language, beaten her mother and when she came forward to save her mother he beaten her. Therefore, she and her mother came to the Tihu PS and lodged the ejahar. In cross stated that her father asked her not to take admission for Higher Secondary as he has financial problem and for that reason quarrel took place between her parents and her father being alcoholic person created nuisance after drinking. PW-1 victim not stated that her father i.e accused sexually abused his daughter, harassed her by using any words coloured with sexual fervor. Her testimony does not point that accused did any act with her having sexual intent. Her in-chief as well as cross pointed that her accused father is an alcoholic

persons and he creates nuisance at home after drinking and on the night of the incident there was altercation between her parents. In chief though stated that accused beat her and her mother but her evidence does not point she sustained injury on her body.

- 8. The statement of PW-2 is that accused is her husband and Miss 'X' is her daughter and she and her daughter Miss 'X' went to Guwahati and worked as domestic helper in the house of one Engineer at Guwahati where from her daughter passed HSLC examination and after declaration of the result of her daughter, her husband called them to his native house, so they came and on that night her husband quarreled with her and gave two blows, dragged her daughter, beaten her and did not allow her to enter in the house. So she lodged the ejahar and Ext-3 is the ejahar. Her cross-examination is that after taking alcohol her husband used to beat them mercilessly and therefore, she lodged the ejahar and now they are residing in the same house with her accused husband and her daughter took admission in BA course. Her evidence not pointed that accused used any word or did any act having sexual intent fervor. They did not whisper taking place of any harassment having sexual fervor upon Miss 'X'.
- 9. PW-3 Mrigen Kalita stated accused is his father, Miss 'X' is his sister and informant is his mother and on the date of incident at 4 pm accused beaten his mother after altercation and thereafter rebuked her sister. After that his mother lodged the ejahr. His cross pointed during day time his father behaves normally but at night after taking alcohol he quarreled with his mother and used to beat her. PW-3 stated incdent took place at 4 pm but PW-1 & 2 stated incident took place at night. PW-2 also stated that accused beat her but she did not state what injury she sustained on her body and evidence pointed that after consuming alcohol quarrel took place between accused with PW-2 and statement of PW-3 pointed that the behaviour of his accused father was not normal at night and his behaviour changed. The statement of the victim made before the court does not point that accused committed any act of sexual harassment upon the victim. The statement of the PW-1, PW-2 & PW-3 when read together does not point the causing of injury upon the body of the PW-1 & PW-2voluntarily by accused. The incident was took place as stated by PW-1, PW-2 & PW-3 when accused was under influence of alcohol, that being so, the ingredients of section 319 not

attracted and prosecution failed to establish the charge of section 323 IPC and 12

of the POCSO Act against the accused.

13. In view of the aforesaid discussion, I come to my definite finding that

prosecution miserably failed to establish the charge of section 323 IPC and

section-12 of the POCSO Act against accused Sadananda Kalita and I hold not

guilty u/s-323 IPC and section 12 of the POCSO Act.

14. In the result, accused Sadananda Kalita acquitted from the charge of

section-323 IPC and section-12 of the POCSO Act and is set at liberty.

15. However, his bail bonds shall remain stands for next 6 (six) months u/s-

437-A CrPC.

Judgment is given under my hand and seal of this court on this the 11th

day of December, 2019.

Special Judge Nalbari

Dictated & corrected by me

Special Judge, Nalbari.

Typed by:

Devajit Roy.

Stenographer Grade II.

APPENDIX

A. <u>Prosecution witnesses</u>

PW-1, Miss 'X',

PW-2, Smt. Rita Kalita,

PW-3, Sri Mrigen Kalita and

PW-4 Dr. Nripen Das.

B. <u>Defence witness</u>

NIL

C. **Prosecution Exhibits**

Ext-1 Statement of victim u/s-164 CrPC,

Ext-2 Seizure list,

Ext-3 Ejahar,

Ext-4 Medical report and

Ext-5 also medical report.

D. <u>Defence Exhibit</u>

Nil.

Special Judge Nalbari