IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.18/2017 (U/S :8 of POCSO Act)

State Versus Ajoy Rajbangshi @ Genda, S/O- Late Deinesh Rajbangshi, Vill- 2 No. Borangajuli, PS-Dimakuchi, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri T.C. Boro, Advocate.

Evidence recorded on: 30.10.17, 255.18, 29.6.18, 27.12.18.

Argument heard on: 10.4.2019. Judgment delivered on: 24.4.2019.

JUDGMENT

1. The prosecution case, as unfolded during trial, in brief, is that on 1.6.2017 the informant, Dulal Debnath lodged an FIR with the Officer-in-charge of Dimakuchi PS allegeding, inter-alia, that on 26.5.2017 at around 3 PM when his minor daughter (real name is withheld, henceforth referred to as the victim) returned from school to her home. Immediately thereafter, the accused Ajoy Rajbangshi @ Genda came to his house and attempted to commit rape on his daughter. Having found no alternative when his daughter raised cry for help the accused fled away. After the incident the victim informed her mother who was working in a nearby tea estate. When her mother asked the accused about the incident the accused abused her and also

pushed her down on the ground. The matter was placed before the local Bengali Youth Federation but they did not settle the matter and, as such, delay was caused in lodging the FIR.

- 2. On the basis of the FIR police registered a case vide Dimakuchi P.S. case No.40/17 U/S 8 of the POCSO Act and launched the investigation. On completion of the investigation police submitted the charge-sheet against the accused Ajoy Rajbangshi @ Genda U/S 8 of POCSO Act to face trial.
- 3. On receipt of the copies of documents supplied U/S 173 Cr.P.C. process was issued to ensure the presence of the accused. In obedience to the process of the court accused entered his appearance and he was furnished with all the relevant copies of documents before consideration of framing of charge against him.
- 4. On consideration of the materials on record my learned predecessor in office having found a prima-facie case and sufficient ground for presuming that the accused had committed the offence U/S 8 of POCSO Act pleased to frame a formal charge thereunder against the accused. The charge so framed against the accused on being read over and explained to the accused to which he pleaded not quilty and claimed to be tried.
- 5. To substantiate the charge the prosecution has examined nine witnesses including the informant, victim and the I.O. of the case. That apart, prosecution also relied on some documents mark as exhibits.
- 6. On closure of the prosecution evidence the accused was examined U/S 313 Cr.P.C. He pleaded complete denial and claimed innocence. However, no evidence was led in support of the defence.
- 7. In the light of the above perspective, the point for determination in the present case is set up and framed as:-

Whether the accused on 26.5.2017 at evening time at about 3 PM at No.2 Borangajuli under Dimakuchi PS committed sexual assault upon the victim, aged about 9 years as alleged U/S 8 of POCSO Act?

8. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

- 9. PW1, Dulal Debnath is the first informant of the case. At the out set it is discernable that he is not the eye witness to the occurrence as he has deposed to the effect that when the occurrence took place he alongwith his wife were absent from their house. On the day of occurrence, the accused came to their house and torn off his daughter's school dress and touched her body. His daughter was 9 years old at the time of occurrence. His daughter at first informed her mother who was working in the tea garden and narrated about the incident by weeping. Later he came to know about the incident and in order to settle the matter he at first approach to Bengali Federation and the boys of Bengali Federation suggested him to approach the police station. Accordingly, he lodged the FIR before the police.
- 10. In cross-examination, he has stated that he lodged the FIR after four days of the incident. He has also admitted that though he has written in the FIR that Bengali Federation tried to settle the matter and gave him a written document in that regard but he did not submit such document before the police at the time of lodging the FIR. There are other houses proximity to his dwelling house and they reside with their families. Police did not seize any article in connection with this case.

- 11. PW.2, Smti. Rajmani Sarkar, PW3, Smti Golapi Rajbangshi and PW4, Rupcharan Rajbangshi are the hearsay witnesses. They have deposed in uniformity that at the time of occurrence while they were plucking tea leaf alongwith mother of the victim, the victim came there and called her mother.
- 12. PW5, Manoranjan Debnath is the scribe of the FIR. He has stated to the effect that one day the father of the victim called him at his house. At that time police also came. On being asked the victim told that on the day of occurrence she came from school to her house. Immediately thereafter accused also came there and asked her to provide him some tobacco. Soon thereafter, the accused suddenly grabbed her and tried to commit rape on her. While she raised alarm the accused fled away. Later victim informed her mother in her work place by weeping. After hearing about the incident from the victim and as per the direction of the police present in the house of the accused he scribed the FIR and after completion of writing of the FIR the same was read over to the informant. The informant having found the FIR has been written as per his version accepted the same and he put the signature therein. Then he also put his signature in the FIR, Ext.1 as Ext.1(1).
- 13. In cross-examination he has stated that he had not mentioned in Ext.1 that he obtained the thumb impression of the informant Dulal Debnath. It is also not mentioned that the contents of the FIR was read over to the informant which was accepted as correct by him. Informant is his relative. Police did not record his statement.
- 14. PW6, Dr. Joy Prakash Sarma is the M & H.O. of Pachimpatla, MPHC, Udalguri, who examined the victim in connection with this case on 02-06-17 and found the following.
 - (1) Nature of injury bruise.
 - (2) No injury seen.
 - (3) Part of body where inflicted not confirmed.
 - (4) No injury found on the body of the victim.

(5) Type of weapon which inflicted also could not be confirmed.

As per his opinion no injury on the person of the victim could be detected. His cross-examination was declined by the defence.

- 15. PW7, Smti Punny Rajbangshi is the mother of the victim. Her evidence discloses that on the day of the incident her daughter was returning from school to her home. In the meantime the accused who resides adjacent to their house came to their house and tried to molest her daughter by touching on her breast. However, her daughter managed to escape and informed her about the incident. At the material point of time, she was working at the house of one person. After coming to know about the incident from her daughter she went to the house of the accused and asked him as to why he tried to ravish her daughter. Then the accused rather became enraged and assaulted her by pulling her down on the ground. The accused also warned her that if she came again in future, she would face dire consequences.
- 16. In cross-examination she has stated that the house where she was working at the material time when her daughter informed her about the incident there were other two ladies working with her. The incident had occurred about 500 feet away from her dwelling house. There are other houses of Jagadish Chakrabarty and Gopal Rai etc. adjacent to her house. She has admitted that though the accused resides in their locality nearby her house, but their relationship with the family members of the accused is not cordial due to some incident occurred previously. She has denied the suggestion that as she had previous enmity with the accused and as such she had brought up a false ground to implicate the accused in this case due to previous enmity.
- 17. PW8 is the victim of the case. Her evidence runs to the effect that on the day of occurrence at about 2 PM she was at her house alone after returning from school. At that time the accused came there and asked her as to whereabouts of her parents. She replied that her parents had gone for their work. The accused then asked her to bring some tobacco for chewing. No sooner did she provide tobacco then the accused suddenly pulled her towards

him with an intention to molest her. At this, she was frightened and managed to flee away from the clutches of the accused and ran towards the house where her mother was working and narrated about the incident. On coming to know about the incident her mother went to the house of the accused alongwith her. When her mother charged the accused for trying to molest her then the accused pushed down her mother on the ground. The accused also warned her mother not to come to his house in future as otherwise she would face dire consequences. An FIR was lodged before the police by her father who later came to know about the incident. The police got her statement recorded under Section 164 Cr.P.C. vide Ext.3 wherein Ext.3(1) is her signature.

- 18. In cross-examination she has revealed that her younger brother Subhangkar Debnath was with her when the incident had occurred. They have no visiting terms with the accused. She has denied the defence suggestion that the accused had neither touch her breast on the day of occurrence nor the accused pulled her towards him.
- 19. PW9, Dilip Mili is the investigating officer of the case. His as usual evidence as regards the investigation of the case discloses that on 1-6-2017 he was posted as O/C at Dimakuchi PS. On that day on the strength of the FIR lodged by one Dulal Debnath he registered a case being Dimakuchi PS case No. 40/2017 U/S 8 of POCSO Act and commenced the investigation of the case. On completion of the investigation he laid the charge-sheet against the accused Ajay Rajbangshi @ Genda U/S 8 of POCSO Act. Ext. 5 is the charge sheet. Ext. 5(1) is his signature.
- 20. In cross-examination, he has stated that the incident had occurred on 26-05-17 and the FIR was lodged on 01-06-2017. It has been explained in the FIR that the matter was placed at first before the Bengali Student Federation but when the matter could not be settled the informant lodged the FIR before the police. He did not seize any documents in course of investigation relating to proceeding before the Bengali student federation in regard to the incident nor did the informant submit any such documents before him.

- 21. On analytical evaluation of the evidence on record as discussed above, it would appear at the threshold that there is no eye witness to the incident of the case except the victim (PW8). Having found the testimony of the victim (PW8) as a paramount importance in respect of the charge levelled against the accused it appears from her testimony that her evidence is not of starling mood coupled with delay in lodging the FIR with the police. Though PW8 has stated in her evidence that the accused who is her neighbour came to her house and tried to catch hold of her in order to molest her on the pretext of seeking tobacco for chewing and she could managed to flee away from the clutch of the accused and informed her mother by running to the place of her work in another house and narrated about the incident is not credible enough due to discrepancies with the testimony of her own father (PW1) and her mother (PW7). As per the first informant (PW1) his daughter at first informed her mother (PW7) while she was working in the tea garden. It is also narrated in the FIR (Ext.1) by the informant (PW1) that his daughter after the incident straight away went to the tea garden to narrate about the incident to her mother. On the other hand PW7, the mother of the victim has stated in her evidence that her daughter came to narrate about the incident while she was working in the house of one person. So, there is material discrepancy as to where the mother of the victim was immediately after the incident. Moreover, the informant (PW1) and the mother of the victim (PW7) have stated that there are many houses adjacent to their house and they have further divulged that due to previous dispute their relationship with the accused was not cordial. In the case of such categorical evidence adduced by the informant (PW1) and PW7, the mother of the victim and in absence of other independent evidence on record of close door neighbours and non-examination of the younger brother of the victim (PW8), who was present at the time of occurrence, has cast a doubt as to the happening of such an incident with the victim PW8 at the material point of time.
- 22. It is admitted fact from the testimony of the parents of the victim PW1 and PW7 that there are other houses adjacent to their house. If such, an incident had occurred as to the attempt on the part of the accused to molest

the victim (PW8), there would have definitely a hue and cry to attract attention of the neighbours. But there is no evidence of the neighbors as to happening of such an incident in the broad day light. When the first informant (PW1) has stated in his evidence and also disclosed in his FIR (Ext.1) that the mother of the victim (PW7) was working in a garden then the evidence of the victim that she straight away went to a house where her mother was working to narrate about the incident is not at all compatible with the prosecution story.

- 23. Further more, there was delay of four days in lodging the FIR before the police from the day of occurrence. Though the first informant has attempted to explain the delay in lodging the FIR placing the matter before Bengali Federation, but the same is not tenable one, in view of the fact that no document has been submitted as regards the proceeding of the matter as regards to the incident with the Bengali Federation. It is also not believable as to what compelled the informant (PW1) to place such a serious incident before the Bengali Federation instead of taking recourse to lodge an FIR with the police properly.
- 24. It is settled position of law that in criminal trial one of the cardinal principle for the court is to look for plausible explanation for the delay in lodging the FIR. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance.
- 25. In the present case, it is discernable that prosecution has failed to satisfactorily explain the delay. There is also neither coherent nor consistent evidence in the testimony of the victim (PW8) to treat her as fully truthful witness. Hence, the inconsistent evidence of the victim (PW8) and discrepancy in the testimony of the informant (PW1) and the mother of the victim (PW7) in support of the material particulars of the case, the delay in lodging the FIR is fatal to the prosecution in the backdrop of the previous enmity between the informant (PW1) and the accused. Therefore, it cannot be ruled out that the

informant (PW1) might have lodged a false case against the accused to feed fat his grudge against the accused owing to previous enmity.

- 26. Having found the testimony of the prosecution witnesses shaky and brittle and not being consistence to the core cannot be acted upon to bring home the charge against the accused beyond all reasonable doubt. Therefore, the accused is entitled to benefit of doubt.
- 27. In the result, I am constrained to hold that the accused Ajoy Rajbangshi @ Genda is not guilty U/S 8 of the POCSO Act. Therefore, he is acquitted thereunder on benefit of doubt and set him at liberty forthwith.
- Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 24th day of April,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 **Dulal Debnath** ii)PW2 Rajmani Sarkar iii)PW3 Golapi Rajbangshi iv)PW4 Rupcharan Rajbangshi v)PW5 Manoranjan Debnath Dr. Joy Prakash Sarma vi)PW6 vii) PW7 Punny Rajbangshi viii) PW8 Urmila Debnath ix) PW9 Dilip Mili

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 FIR.

ii)Ext.2 Medical report.

Statement of the victim U/S 164 Cr.P.C. Sketch Map

iii)Ext.3 iv) Ext.4 v)Ext.5 Charge sheet.

Dictated and corrected by me.

Special Judge, Udalguri