IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 02 of 2019 u/s 8 of POCSO Act 2012 (Arising out of Simaluguri P.S. Case No. 201/2018)

State of Assam

-Vs-

Sri Dadu Handique Accused person

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. D.K. Gohain, Advocate

Date of framing Charge : 15.02.2019
Dates of Evidence : 03.05.2019
Date of Argument : 03.05.2019
Date of Judgment : 03.05.2019

JUDGMENT

- 1. Prosecution case in brief is that on 23.11.2018, informant Sri M. Chetia lodged an FIR with O/C, Simaluguri P.S. alleging, inter alia, that on 22.11.2018, at about 10.30 PM, while his daughter victim 'M' (name withheld), aged about 16 years was sleeping in her room, accused Dadu Handique entered in the room of victim and committed misdeed with her.
- 2. On receipt of the FIR, Simaluguri P.S. Case No. 201/2018 u/s 376 IPC r/w Section 4 of POCSO Act, 2012 was registered and investigated. Accused was arrested and forwarded to Court for judicial custody. On completion of investigation, the I.O. has submitted Charge-Sheet against the accused u/s

448/384 IPC, read with Section 8 of POCSO Act, 2012.

- 3. It may be noted here that initially, after receipt of the charge sheet vide order dated 04.01.2019, the instant case was transferred to the Court of learned Special Judge cum Addl. Sessions Judge (FTC), Sivasagar for disposal. Since the Court of Addl. Sessions Judge (FTC), Sivasagar was vacant due to retirement of the Presiding Officer, as such vide order dated 15.02.2019, case was withdrawn to this Court for disposal.
- 4. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 15.02.2019, charge u/s 8 of POCSO Act, 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses including the victim and her parents.
- Considering the nature of the evidence of victim and her parents (PW 1 and PW 3), examination of accused u/s 313 Cr.P.C is dispensed with. Upon generally hearing both the sides and without calling the accused to enter into defence, I dispose the case by using powers u/s 232 Cr.P.C. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE: -

- 6. (i) What was the age of the victim on the date of alleged occurrence?
 - (ii) Whether on 22.11.2018, at about 10.30 PM, victim was subjected to sexual assault by the accused?

DECISION AND REASONS THEREOF:

PW 1 Sri M. Chetia the informant as well as father of the victim and PW 3, Smt. A Chetiya, mother of the victim in their evidence deposed that at the relevant time of incident victim was a student of class XI and aged about 17 years. On 22.11.2018 at about 11.30 PM, while they were sleeping they saw that accused Dadu Handique was sitting in the room of victim. On this they apprehended the accused and raised alarm. Nearby peoples gathered in his

house. Gaonburah Mahananda Chetiya was also called. On asking by Gaonburah, accused disclosed that he came to his house to take away victim 'M' with him. Accused is a married person having one child. His daughter victim 'M' also stated his willingness to go with the accused. On their arrogance, on the next day PW 1 filed the FIR vide Exbt. 1 and handed over the accused at Simaluguri P.S. PW 1 further deposed that police seized Admit Card of the victim vide Exbt. 2 the seizure list. Exbt. 3 is the seized Admit Card of victim issued by SEBA (proved-in-original). As per Admit Card, the date of birth of the victim is 01.09.2002. In their cross by defence, PW 1 and 3 stated that victim was also adamant to marry the accused. They denied that victim was elder than 18 years of age. PW 1 admitted that he cannot say about the contents of the FIR. It is also denied by PW 1 that neither police seized the Exbt. 3 (Admit Card) from him nor handed over back the original to him. PW 1 admitted that his marriage was performed in the year 1997. He has four children. Victim is his second child. The first child was born after one year of his marriage. Victim was born after one year of his first child. Victim might be born in the year 1999. PW 1 and 3 further stated that as their daughter victim 'M' has left her adamency to marry the accused, they are not willing to proceed further with this case.

PW 8. 2 the victim in her evidence deposed that at the relevant time of incident she was a student of class XI and aged about 17 years. Her date of Birth is 01.09.2002. Prior to this incident, she has love affairs with Dadu Handique for about 2 years. On 22.11.2018, on her call over phone, at about 11 PM accused came to her house and he entered their house as she opened the door. At that time, her parents were sleeping. She also cooked rice for him. He took his dinner in her room. While he was sitting with her in her room, suddenly her mother came to her room and saw him and called her father. On getting up, her father closed the door and called other family members and villagers. Villagers also saw the accused in her room. Gaonburah was also called. On asking by Gaonburah, both of them disclosed that they love each other. She knew that accused is a married person having one child. On the next day, her father filed the FIR and handed over the accused to Simaluguri PS. She was also taken to Police Station. Police also took her to Hospital for medical check up and to Court for her statement vide Exbt. 4. Victim further deposed that, on her refusal to return back to home, she was sent to Swapnalaya, where she stayed for about 25 days. Thereafter she returned home and presently staying with her parents. In her cross by defence victim admitted that she does not have birth certificate. She cannot say the exact date of birth. The date of Birth as stated by her is as per school Admit Card. Her brother is one year elder than her. She denied that presently she is aged about 19 years.

- 9. From the above evidence, so far age is concerned, as per Admit card, the date f birth of victim was 01.09.2002 and on the date of occurrence i.e. on 22.11.2018, the victim was aged about 16 years 9 months. However PW PW 1 to 3 admitted they cannot say the exact date of birth. PW 2 also admitted she deposed her date of birth as mentioned in the admit card. PW 1 admitted that he married in the year 1997 and the victim was born within 2 years of their marriage. She might be born in 1999. In medical examination report, as per radiological report, the age was determined as above 18 years. Considering all above, I am of the considered opinion that on 22.11.2018, the victim was aged above 18 years.
- 10. So far the allegation of sexual assault by the accused, from the evidence on record, it appears that there is no denial to the fact that accused was present in the room of the victim and he was seen by the parents of the victim. From the evidence of PW 2 the victim, it appears that prior to this incident, she has love affairs with the accused for about two years and on the day of incident, on being called and opening the door by her, accused entered in her room and except taking food and sitting with her in her room, accused did nothing with her. In her evidence the victim nowhere stated that accused

has committed sexual assault on her. PW 3 though deposed that she that accused was holding the hand of the victim but this fact was not supported by the victim. From the evidence of PW 1 and 3 it also reveals that as the victim was adamant on her stand to marry the accused, PW 1 lodged the FIR. Both PW 1 and PW 3 in their cross examination admitted that as the victim left her adamancy, they are not interested to proceed further with this case. From the above evidence, it appears that the ingredients of offence u/s 8 of POCSO Act are totally missing in this case.

- 11. Considering the above evidence on record, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 8 of POCSO Act against the accused Sri Dadu Handique. As such, accused Sri Dadu Handique is acquitted from the charge u/s 8 of POCSO Act, 2012 and set at liberty forthwith.
- 12. Bail bond executed by the accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- 13. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation u/s 357-A Cr.P.C.
- 14. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 15. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 3rd day of May, 2019 at Sivasagar.

Special Judge, Sivasagar:

APPENDIX:

- 1. <u>Prosecution witnesses</u>:
 - PW 1 Sri M. Chetia (Informant)
 - PW 2 Victim 'M'
 - PW 3 Smt. A. Chetia
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt. 1 FIR
 - Exbt. 2 Seizure list
 - Exbt. 3 Admit Card of the victim issued by SEBA
 - Exbt. 4 Statement of the victim given u/s 164 Cr.P.C.

Special Judge <u>Sivasagar</u>