IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM



Spl. POCSO Case No. 04/2017 Sec. 4 of POCSO Act, 2012

State of Assam

-VS-

Sri Damodar Borah

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P.

For the defence : Mr. S · Rahman , learned Advocate.

Dates of recording Evidence: 15.03.2018, 01.06.2018.

Date of Argument

: 01.06.2018.

Date of Judgment

: 01.06.2018.

JUDGMENT

- 1. The prosecution case in brief is that on 23.03.2017 the informant, Smti Sanju Ghising lodged an FIR with the OC Behali PS stating inter-alia that on 22.03.2017 the accused, Damodar Borah taking advantage of absence of his wife took his dumb child aged about 10 years (name is withheld) to his official quarter and committed 'beya kam' on her. She stated that the victim had through her various gestures informed her about the incident for which one 'bichar' was called at about 3 PM on 23.03.2017 and as per its decision, she lodged the FIR.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted a charge-sheet against the accused u/s 4 of POCSO Act. The accused in due course appeared before this court to face trial. He was furnished with the copies of the relevant documents. After hearing on the point of charge and taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused had committed an offence punishable u/s 4 of the POCSO Act, the charge accordingly was framed against him, which on being read over and explained, he pleaded not guilty.

116/18
116/18
116/18
116/18
116/18

3. During trial, the prosecution examined three witnesses in all including the informant and her husband and the Investigating Officer. From the case record it appears that though the victim had appeared to adduce evidence and an expert interpreter, Smti Sewali Borah too appeared to assist the court in order to interpret the oral testimony of the victim, but the expert interpreter from the North East Regional Multipurpose School and Handicapped Training Centre, Burigang, Balipukhuri in writing had informed that the victim is not in a position to say anything and it is impossible for her to take any information from the victim. It also appears from the order dated 15.05.2018 that the court also tried to personal interact with the victim but failed as the victim does not understand any question put to her and she even could not say her name. Considering the report of the expert Interpreter, the evidence of the victim was dispensed with.



Taking note of the evidence as adduced by the mother of the alleged victim i.e., the informant, PW 2 and the father of the victim, PW 1 and the evidence as adduced by the PW 3- the Investigating Officer, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Upon hearing both the sides, taking note of the materials on record and also by taking judicial notice of the Medical Examination of the victim, the prosecution evidence was closed. As no any incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 2 is the informant, who is the mother of the victim, namely, Sanju Ghising. She stated that the incident took place in the month of April, last year. According to her, it appeared to her that the accused had committed some offence on her 11 year old dumb daughter. She stated that she misunderstood her and filed the FIR against the accused. She further stated that the FIR was written by someone else wherein she had only put her thumb impression. She is not aware of the contents of the FIR. She also stated that she has not witnessed the alleged the occurrence. In her cross-examination she stated that she lodged the FIR out of misunderstanding and for the reason that she was asked to do so by others in this regard. She has no grievance against the accused, she stated.
- 6. PW 1, Kulbahadur Ghising stated that he could know that the accused had committed 'beya kam' to his daughter and a meeting was called in that regard. According to him,

Addl. Sessions Judge Sonitaur.

Spl. POCSO Case No. 04/2017

the boys of the organisation, ATSA instigated his wife to lodge the FIR and they forcibly called police. He also stated that his daughter is dumb and he has no grievance against the accused. He further stated that he did not witness the said occurrence.

- 7. Thus from the evidence of the parents of the victim, we find that the FIR was lodged against the accused out of misunderstanding and on being instigated by others. PW 3, S.I., Debojiban Saikia, the Investigation Officer of the case, stated in his cross that the Medical Examination Report of the victim does not disclose of any such offence committed on her.
- 8. From the evidence of the three vital witnesses, we do not find any convincing material against the accused to convict him on the offence charged against him. The prosecution has failed to prove its case. I therefore acquit the accused person from the offence charged against him and set him at liberty forthwith. The petition no. 1034/18 filed by the accused u/s 437-A CrPC is allowed upon hearing both the sides. The bail bond executed on behalf of the accused is extended for a period of six months. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 1st day of June, 2018.

(D. BORA)

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Addl. Sessions Judge Biswanath Chanali, Sonitpur



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Kulbahadur Chetry

PW2- Smti Sanju Ghising

PW3- S.I. Debajiban Saikia (I.O.)



Exhibits proved by the prosecution witnesses:

Exhibit-1: Sketch Map.

Exhibit-2: Charge sheet.

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

16/18

Addl. Sessions Judge Biswanath Chariali, Sonitpur