IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 10/2018

State of Assam

-Vs-

1. Sri Tanuj Borah

2. Sri Diganta Deka.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused : Mr. Dwijen Kr. Boro & Mr. R. Khaklari, Learned

Advocate.

Date of Evidence : 04-09-18.

Date of Argument : 07-09-18:

Date of Judgment : 14-09-18.

JUDGMENT

- The prosecution case in brief is that on 13-06-2017, at about 07 pm, the
 accused persons unlawfully entered into the house of the informant and
 sexually assaulted her sister (Victim-A), who was alone at home at that
 time. Hence the informant Bibari Boro lodged FIR before the Officer InCharge of Tangla P.S.
- 2. On the basis of the FIR, Tangla PS Case No. 77/17, U/S 448 IPC R/W Section 10 of POCSO Act was registered and after completion of

investigation Police submitted charge-sheet U/S 448 IPC, R/W Section 10 of POCSO Act against the accused persons Tanuj Borah and Diganta Deka.

- 3. The learned Special Judge vide Order dated 25-07-18, transferred the case to this court for disposal.
- 4. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offences under Section 448I.P.C., R/W Section 10 of POCSO Act charges were framed there under and the ingredients of charges under Section 448 I.P.C., R/W Section 10 of POCSO Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 5. The statement of the accused persons had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
- 6. The prosecution in order to prove its case examined the following 6(six) witnesses:

PW1- Smti. Bibari Boro.

PW2- Victim-A.

- 7. Situated thus, the point for determination in the instant case are set up as follows:-
 - (I) Whether the accused persons committed house trespass by entering into the house of Smti. Bibari Boro with intent to commit an offence and thereby committed an offence punishable under Section 448 IPC?
 - (II) Whether the accused persons committed sexual assault upon Swmsri Narzary and thereby committed an offence punishable under Section 8 of POCSO Act ?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defense counsel Mr. Dwijen Kr. Boro & Mr. R. Khaklari. Learned defence counsel has argued that the ingredients of Section 448 I.P.C., R/W Section 10 of POCSO Act have not been established in the present case against the accused persons.
- 9. I have gone through the evidences on record. The prosecution to prove its case examined 2(two) witnesses, PW1 is Smti Bibari Boro, who is the informant and vital witness of the case had deposed that accused Diganta Deka was the friend of her late husband. At the time of occurrence her sister/victim was alone at home. On that day the accused persons came to her house in a vehicle, then her sister who did not know the accused persons, out of fear raised hue and cry. Then the villagers came to their house and assaulted the accused persons. Thereafter, PW1 reached home and the villagers compelled her to lodge the FIR. Ext.-1 is the FIR. Ext.-1(1) was the signature of PW1. In her cross-examination PW1 had revealed FIR was written in the police station. She only put her signature in the FIR. Though she was reluctant to lodge the FIR but she had to lodge the FIR as the villagers forced her to do.
- 10. PW2 is Victim-A. In her evidence she had deposed that she used to reside in the house of her sister/informant Bibari Boro to look after her children. About one year back in the evening at about 7 pm, while she was in the house of her elder sister Bibari Boro, on hearing the sound of bike outside the house she raised hue and cry out of fear. Then the villagers came to their house. She saw the accused persons outside their house. Later on, her elder sister Bibari Boro came to home and the villagers asked her to lodge the FIR against the accused persons. She gave statement before the Magistrate under Section 164 Cr.P.C. She put her thumb impression in her statement. In her cross-examination PW2 had revealed that when she

raised alarm the accused persons were outside the house. Then the neighbors came to their house. The accused persons did not misbehave with her. In her statement recorded in 164 Cr.P.C. she gave statement as tutored by the villagers.

- 11. On appraisal of evidence on record it appears that there is no incriminating evidence against the accused persons. PW1, the informant & PW2, the victim, who are the principal and material witnesses of the case, have not adduced evidence implicating the accused persons. PW1 has deposed that she has not seen the incident and due to the pressure from the villagers she has lodged the case. On the other hand PW2, the victim has stated in her cross-examination that the accused persons have not misbehaved with her which shows that she was not sexually assaulted by the accused persons.
- 12. In view of above discussion it appears that the prosecution has failed to establish the charges under Section 448 I.P.C., R/W Section 10 of POCSO Act against the accused person.
- 13. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

14. In the result, the accused persons Tanuj Borah and Diganta Deka are found not guilty under Section 448 I.P.C., R/W Section 10 of POCSO Act and acquitted of charges under Section 448 I.P.C., R/W Section 10 of POCSO Act and set with liberty forthwith.

15. Judgment signed, delivered and pronounced in the open court today the 14^{th} of September, 2018.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI. Special (POCSO) 10/2018 APPENDIX

(A) Prosecution Exhibits : Ext-1- FIR

Materials Exhibits : Nil.

(B) Defence Exhibits : Nil.

(C) Exhibits produced by witness: Nil.

(D) Court Exhibits : Nil

(E) Prosecution witnesses: PW1- Smti. Bibari Boro.

PW2- Victim- A.

(F) Defence witnesses : Nil.

(G) Court witnesses : Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri.