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

SONITPUR, ASSAM

Spl POCSO No. 08/2015

U/S 376(2)(f) IPC, r/w Section 4 of POCSO Act, 2012

State of Assam

-VS-

Sri Bhisma Gautam

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence

: Mr. D.K. Borah, learned Advocate

Dates of recording Evidence: 28.08.2019, 07.02.2020

Date of Argument

: 07.02.2020.

Date of Judgment

: 07.02.2020.

JUDGMENT

- 1. The prosecution case in brief is that on 04.10.2015 the informant namely, Sri Hemlal Gautam lodged an FIR with the OC, Behali Police Station stating inter alia that on 10.08.2015 at about 3.30 PM, taking advantage of his absence in his house his neighbour, the accused Bhisma Gautam had committed rape on his 8 year-old daughter (name is withheld). He stated that he could know about the incident from his daughter.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused person u/s 376(2)(f) IPC, r/w Section 4 of the POCSO Act.
- 3. The accused persons in due course, appeared before this court to face trial. The copies of the relevant documents were furnished to him. Upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused has committed offences u/s 376(2)(f) IPC, R/W Section 4 of the POCSO Act. The charges were accordingly framed against him which on being read over and explained, the accused pleaded not guilty.
- 4. During trial, the prosecution examined two witnesses in all including the informant and the alleged victim. Looking into the evidence as adduced by both these vital witnesses, more

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particularly, the evidence of the victim-PW 2, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the materials on record, the prosecution evidence was closed. As no 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

- i) Whether the accused on the day of the alleged occurrence committed rape on the victim who is under the age of 12 years?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the victim who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant and the father of the alleged victim, namely, Sri Hemlal Gautam. He stated that the accused is his nephew. About 4 years back, when he returned to his house, in the evening hours, he found his adopted daughter, who was 8 years old then, on a 'bad condition'. When he inquired, she did not utter anything. His wife told him that the accused had committed 'bad work' on her. When he asked about the same, the accused denied to the allegations. Later, when the villagers asked him to lodge an 'ejahar', he lodged the same against the accused, which he proved as Ext. 1. In his cross, he stated that he did not hear what the victim had stated to his wife. As the victim did not sustain any injury, she was not taken for medical examination. He further stated that he lodged the Ext. 1 on the advice of the villagers.
- 6. PW 2 is the victim. She stated that the incident took place when she was about 9 years old and was studying in Class-III. She stated that the accused did not misbehave her and what she had stated was based on what she was taught by the villagers to say. She further stated that the wife of the accused had enmity with the village women folk. She further stated that the informant had lodged the 'ejahar' out of misunderstanding.
- 7. Thus from the evidence of both these vital witnesses, more particularly from the evidence of the victim, we do not find any material against the accused to convict him on the offences charged against him. The prosecution has failed to prove its case. As such I acquit the accused and set him at liberty forthwith. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. 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 7th day of February,

2020.

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

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ANNEXURE

Witnesses examined by the Prosecution:

PW1- Hemlal Gautam (Informant)

PW2- Victim.

Exhibits proved by the prosecution witnesses:

Ext.1- Ejahar

Ext. 2- Statement of the victim recorded u/s 164 CrPC.

Witnesses examined by the Defence:

None

Documents exhibited by the Defence:

None.

John Bry