IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora, Special Judge,

Udalguri, Assam.

Special (POCSO) Case No. 7/17. U/S 6 of the POCSO Act.

State of Assam......Complainant.

Vs

Bimal Bahadur Raya..... Accused.

Appearance:-

For the Prosecution : Mr. P.Baskey, Public Prosecutor.

For the defence : Mr. S.Sarma, Advocate.

Date of argument : 4.9.2017.

Date of Judgment : 4.9.2017.

JUDGMENT

The case of the prosecution, in brief, is that on 2.2.17 an FIR was lodged with Tangla Police Station by informant, Smti. Pabitra Chetry stating, inter-alia, that on 2.2.17 at about 12 0'clock noon tenant of her house Sri Bimal Raya, taking the advantage of busyness of other inmates of her house, induced her daughter (hereinafter referred to in short as "X"), aged about 6 years, to his room and after opening her pant touched her private part. Then the girl shouted. Immediately the girl informed the matter to the wife of her father's brother. Thereafter, they handed over the accused to the police of Tangla P.S. On receipt of the FIR Tangla PS Case No.12/17 u/S-6 of the POCSO Act was registered. Police held usual investigation. At the conclusion of investigation police laid charge-sheet against accused for the offence punishable u/S- 6 of the POCSO Act.

2. This court furnished copy of the necessary papers to the accused person. Upon perusal of materials on record and hearing submission advanced by the parties this court found a prima-facie case to frame charge against the

accused Bimal Bahadur Raya for the offence punishable u/s-6 of the POCSO Act and charge was framed accordingly. Charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. In order to bring home the guilt of the accused person prosecution examined as many as five witnesses. After completion of prosecution evidence, ld. counsel for accused submitted to close the evidence on the ground that the complainant, victim in this case nowhere supported any materials of alleged charge. On close scrutiny of the statement of complainant, victim and other witnesses could reveal any material against the accused as to the alleged charge. It has been held in S. Rama Reddy Vs. R. Ramy Reddy, reported in AIR (SC)(2008) 2006 that speedy trial is the fundamental right of the accused person.

Considering the aforesaid view coupled with the aforesaid mandate of the Hon'ble Apex Court, prosecution evidence is closed.

Accused is examined U/S 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused put before him for his explanation where he denied the evidence and allegation and declined to give defence evidence.

4. I have heard argument advanced by the learned counsel of the parties and carefully gone through the evidence and other materials on record.

5. **POINTS FOR DETERMINATION**:

Whether the accused person on or about 2.2.17 at about 12 noon at Tangla, Ward No.4 under Tangla PS committed aggravated penetrative sexual assault upon said "X", aged about 6 years?

DECISION AND REASONS THEREOF:

6. Prosecution examined informant, Mrs. Pabitra Chetry as PW3. She stated that she knows the accused person present in the dock. Victim "X" is her daughter. The occurrence took place on 2.2.17. Accused is her tenant and also her relative. At the time of occurrence she was not present at home. While

she was returning home from school her daughter by weeping told her that accused touched her body. Her age was 6 years at the tome of occurrence. She got nervous. She asked the accused. He denied commission of incident. She also scolded him and slapped him. She lodged ejahar before Tangla PS. Matter has been settled in the village. So, she does not want to proceed with the case. She has no objection if the accused is acquitted from this case. Ext.1 is the ejahar. Ext.1(1) is her signature.

In cross-examination she reiterated that they have compromised the matter.

7. PW.1, Sri Pashupati Newar stated that he knows the accused person present in the dock. Informant is her sister-in-law. Victim is his niece. The occurrence took place 5 months ago. On the day of occurrence he was on duty. His wife, Champa Newar called him over phone said that an incident took place in the house. On getting information after ½ an hour he came to my house and saw many people gathered. When he entered into his courtyard, he saw that the accused was assaulted by two village people. His wife could not say anything since she was nervous. After 5 minutes police came to their house. he came to the police station and learnt that accused committed rape on "X". The age of the victim was about 5/6 years at the time of occurrence.

In his cross-examination he stated that though he was called by his wife but she did not say anything about the incident. The victim was sent for medical examination but she was not admitted. He did not see the incident.

8. PW2, Sri Bhuban Jyoti Talukdar stated that he knows the accused person present in the dock. He also knows the victim and informant. The occurrence took place 3/4 months ago. At the time of occurrence he was not present. At about 1.30/2 PM he heard that the accused committed rape on the victim. On getting information he went to the police station. After 3 days police again came to the house of informant and police recorded his statement.

In cross-examination this witness stated that he did not go to the place of occurrence. He was reported about the incident. His house is situated near the house of informant.

9. PW4, Sri Jyoti Sikhar Sarma stated that he is a teacher of the school where Smti. Pabitra Chetry works. Principal of his school requested him to go

the police station. He wrote the ejahar Ext.1. Ext.1(2) is his signature as scribe of the ejahar.

- 10. PW5 is the victim "X". She stated that accused did nothing with her. She had forgotten the incident. Ext.2 is her statement u/s 164 Cr.P.C. Ext.2(1) and 2(2) are her signature.
- 11. In the instant case the informant as well as the alleged victim "X" did not support the case of the prosecution on any material point. It is in the evidence of "X" that accused did nothing with her. Informant, PW3 also stated that at the time of incident she was not present at home. After returning home her daughter (victim) by weeping told her that accused touched her body. She also stated that she is not willing to proceed with the case as the case has been settled in the village. PW1 and PW2 are hearsay witness. They only heard about the incident. Medical report of the victim shows no intercourse, no injury. There is no whisper in the evidence of informant and victim that the accused person committed the alleged crime. They have not implicated the accused in the alleged commission of offence. The ingredients of the offence punishable under Section 6 of POCSO Act are totally missing in the instant case.
- 12. In view of the foregoing discussion, I find and hold that the prosecution has miserably failed to prove its case against the accused person and hence accused is liable to be acquitted.
- 13. In the result, accused is acquitted of the charge and set him at liberty.

Given under my hand and the seal of this court on this the 4th day of September /2017.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge,