# IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BAJALI, PATHSALA

# Spl. POCSO Case No. 11 of 2019

U/S - 8 of POCSO Act, 2012.

State

- Versus -

Motaleb Ali @ Abdul Motaleb

: Accused person.

# Present: Sri L.K. Saikia, AJS, Additional Sessions Judge, Bajali, Pathsala.

# Appearance & particulars :-

For the State : Smti. Dhira Devi Ld. Addl. P. P. For the accused persons : Sri Giridhar Choudhury & Ors., Ld.

Advocate.

Date of framing charge : 13-12-2019

Dates of recording evidences: 21-12-2019, 02-01-2020.

Date of recording statements u/s 313 Cr.P.C. : 02-01-2020.

Date of Argument : 02-01-2020 Date of Judgment : 08-01-2020.

#### JUDGMENT

- 1. The prosecution case in brief, is that, one Niren Ramchiary lodged an ejahar on 23-12-2018 with the I/C Dhumarpathar Out Post alleging, *inter-alia*, that on 23-12-2018 at about 10 a.m. the accused person took the X(victim) on lap and thereafter took to the nearby bamboo bush and tried to committing rape on the victim. Hence, this case.
- **2.** Having got the FIR on 23-12-2018, I/C Dhumarpathar made a GDE No. 821/18 dtd. 23-12-2018 and forwarded it to the O/C,

Patacharkuchi for registering a case and take up the matter for investigation. Accordingly the FIR was registered as Patacharkuchi P. S. Case No. 848/18 u/s 8 POCSO Act. 2012 and endorsed I/C, Pradip Kr. Barman to continue the investigation and submit FF.

- **3.** During investigation the I/O visited the place of occurrence, prepared sketch map of the place of occurrence, recorded the statements of witnesses including the victim girl, conducted medical examination of the victim, produced her before the Court wherein the Ld. Magistrate recorded her statement u/s 164 Cr.P.C, and after completion of investigation, having been found *prima-facie* case, the I/O filed charge sheet u/s 8 POCSO Act. 2012 against the accused Motaleb Ali.
- 4. On appearance of the accused person before this Court copies of the prosecution documents were furnished to him and after hearing the learned Addl. P. P. appearing for the State and the learned defence counsel and after perusal of materials available on record u/s 173 Cr.P.C., having been found sufficient grounds for presuming that the accused person has committed the offence, framed the formal charge 366 IPC and section 8 of POCSO Act, 2012. The charges so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- The prosecution in order to prove its case examined altogether 4 (four) PWs i.e. the informant and the victim and other two witnesses. After examining these witnesses the Ld. Addl. PP submits that the vital material witnesses have already been examined and there is no chance of further development of the prosecution story and hence, prays to close the prosecution evidence.
- **6.** Heard the Ld. Addl. PP appearing for the state. Perused the case record and considering the submission put forward by the Ld. Addl. PP the evidence of prosecution side is closed.
- 7. The defence plea is of total denial. The accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations leveled against him by the prosecution witnesses. The

defence side has not adduced any defence evidence.

**8.** Heard argument of learned Addl. P. P. and the learned defence counsel.

# 9. **POINTS FOR DETERMINATION**

(i) Whether the accused person on 23-12-2018 at about 10 a.m. at Chenglimari under Patacharkuchi Police Station tried to commit sexual assault on the victim by removing her wearing clothes by grabbing her and thereby committed an offence punishable u/s 8 of POCSO Act, 2012?

#### **EVIDENCE OF THE WITNESSES**

- **10.** To arrive at the judicial decision, let me see what the witnesses have stated.
- 11. PW-1 Sri Charayan Boro, deposed that he knows the informant of this case and also knows the accused person Mutaleb Ali, who is present in the Court today. Victim is his daughter. In the last year in the Assamese month of 'Puh' the incident took place and at that time his daughter was about 9 years old and she was reading in class III (three). On the day of the incident he went out for working and in the evening time he returned to home. After returning to home his wife told him about the incident that the accused person took their daughter on his lap and thereafter asked what and which class she was reading. The accused person doing bamboo works with 'dao' for that he went to their house for asking 'dao' to his wife. It is also told to him by his wife that the accused person did not do anything to his daughter.

During cross-examination, PW-1 deposed that the bamboo bush was standing near to their house. The accused person with a view to cut bamboo came to their house. Nothing had happened as stated in the FIR.

**12.** PW-2 Smti. Rupay Boro, deposed that she knows the informant of this case and also knows the accused person Mutaleb Ali,

but do not know what he is doing. Victim is her daughter. She has forgotten the date & day of occurrence. On that day the accused person took her daughter to nearby bamboo bush and while she asked why he took her daughter, then he released her daughter from his lap. At that time some other persons were also there. Seeing the incident the other persons who were present there insisted upon to file FIR. In the mean time some boys of student union arrived and they have filed the FIR. At that time her daughter was about 8 years old and was reading in class III.

In cross-examination, PW-2 deposed that the bamboo bush is standing near to their house. The accused person did not do any misbehave or bad work to her daughter except taking her in his lap due to affection. Nothing had happened as stated in the FIR.

13. PW-3 X(victim), deposed that one student of ABSU filed this case. She does not know the accused person properly. Nothing had happened with her. The accused person did not do anything with her. Before today also one day she came to the Court but she has forgotten what she stated in the Court on that day. One day the accused person took her to nearby bamboo bush. Police one day took her to FAAMCH, Barpeta for medical examination. The Doctor of FAAMCH examined her by opening her mouth and eye and thereafter produced her before the Court and whereby the Magistrate had recorded her statement vide exhibit No. 1.

During her cross-examination, PW-3 deposed that the accused person (i.e. the old man) did not do anything with her. ABSU themselves filed this case.

14. PW-4 Sri Niran Ramchiary, deposed that at the time of filing of the FIR he was the president of Duramari Unit A.B.S.U. He knows the victim of this case, whose house is situated at Holongbari (border of their village). He does not know the accused person. He has seen the accused person only on today, but he knew that he is from Holongbari. Before one year ago the incident took place. One day at about 5.30 p.m. he came to know about the incident from some

members of A.B.S.U. that the accused person asked 'dao' for cutting bamboo from the mother of the victim. Accordingly the victim handed over the 'dao' to that person. More than that he does not know anything about it yet as per instruction of the villagers he lodged the FIR. Vide exhibit No. 2.

During his cross-examination, deposed that he does not know actually what had happened as he has not seen the incident. But lodged the FIR after hearing about it from the villagers.

#### **DISCUSSIONS, DECISIONS, AND REASONS THEREOF**

- **15.** Perused the case record and also gone through the provision of law.
- 16. PW-4 in the informant who specifically stated before the Court he do not know anything about the incident except that the accused person came to the house of the victim and asked the victim's mother about a 'dao' for cutting bamboo and following this incident there was some gathering of villagers at the house of PW-1 and at the instigation of the villagers he had filed the FIR but he do not know what actually had happened.
- 17. PW-2 is the father of the victim who at the time of the happening of the incident was not present at the house and on returning to home his wife (PW-1) told him that accused to their house for asking a 'dao' to cutting bamboo except that PW-1 did not tell him anything. It is also stated by him that nothing had happened as stated in the FIR.
- 18. PW-3 the victim stated that the accused person did not do any bad work with her but one day he took her in his lap near the bamboo bush except that nothing had happened. PW-1 also deposed that one day the accused person came to their house for asking a 'dao' with a view to cutting bamboo so following his request she asked her daughter to give the 'dao' to the accused person and accordingly her daughter (PW3) gave the 'dao' to the accused person. She also stated that nothing had happed as stated in the FIR. The villagers with the help of A.B.S.U. Students unnecessarily raised

commotion and filed the FIR.

- 19. On considering the evidence of the witnesses it is found that nothing had happened as stated in the FIR even PW-3 the victim has also not supported to the case of the prosecution by saying that the accused person did not do any bad work with her. The other witnesses i.e. PW-2 & PW-4 are hearsay witnesses so their evidences cannot be admissible under the law as they had heard about the incident some third party but not from the victim. PW1 though present at the time of happening of the incident but did not implicate the accused person in any manner.
- **20.** Court cannot go beyond the evidence, court is to confine with the evidence available in the record only. So evidence available in the record is that nothing had happened as stated in the FIR.
- **21.** In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as required under the law.
- **22.** Accordingly, the accused Motaleb Ali @ Abdul Motaleb is acquitted of the offences charged u/s 8 of POCSO Act, 2012 and set him at liberty forthwith.
- 23. The bail bond of the accused person is extended for further period of another 6 (six) months u/s 437 (A) Cr.PC.C
- **24.** A copy of this judgment be given to the District Magistrate, Barpeta u/s 365 Cr.P.C.

- **25.** The Sessions Case is disposed of accordingly.
- **26.** Judgment is pronounced and delivered in the open Court in presence of both the parties and I put my hand and seal of this Court on this 08th day of January, 2020.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictated & Corrected by me

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

#### **APPENDIX:-**

# **Oral evidences:-**

PW-1 Sri Charayan Boro

PW-2 Smti. Rupay Boro

PW-3- X(victim)

PW-4 Niran Ramchiary

# **Documentary evidence :-**

Ext. 1 - FIR

Ext.-2- 164 Statement.

# Defence evidence.

NIL

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.