IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM

Present:: Smti.S.Bora,

Special Judge, Udalguri, Assam.

Special (POCSO) Case No. 15/16. U/S 8 of the POCSO Act.

State of Assam......Complainant.

Vs

Sri Keshab Ch. Saharia...... Accused.

Appearance:-

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

For the defence : Mr. R. Khaklari, Advocate.

Date of argument : 21.11.2017.

Date of Judgment : 21.11.2017.

JUDGMENT

The case of the prosecution, in brief, is that on 18.9.15 in the evening time accused called the informant for lightening in the temple. After some times accused called her inside the room for watching TV. Thereafter, the accused touched the private parts of her body and sat her on his lap. She somehow escaped from the clutches of the accused and narrated the incident to her mother. Her mother informed the matter to the wife of the accused. But wife of accused threatened her mother. Hence this prosecution case.

- 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 for the offence punishable u/s 8 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 four witnesses. 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 on or about 18.9.15 at evening time at Bholabari Bagicha under Kalaigaon P.S. committed aggravated penetrative sexual assault upon Miss Barnali Prasad, aged about 13 years?

DECISION AND REASONS THEREOF:

6. Prosecution examined victim as PW3. She stated that she knows the accused. He is teacher of Bholabari High School. On the day of incident while she was coming from her parental uncle's house, accused called her. Prior to incident she also went to his house. The accused told her to close the windows. She got frighten and came out from the house of the accused and lodged ejahar. Ext.1 is the ejahar. Ext.1(1) is her signature. She was produced before the court. Magistrate recorded her statement. Ext.2 is the statement. Ext.291), 2(2) and 2(3) are her signature.

In cross-examination, she stated that she made statement before the Magistrate as tutored by the villagers. She has no objection if the accused is acquitted. She has filed the case due to misunderstanding.

- 7. PW.4, Smti Binu Prasad is the mother of the victim. She deposed that she knows accused. Victim is her daughter. At the time of occurrence she was not present. Ejahar was lodged due to misunderstanding.
- 8. PW1, Smti. Bhogeswari Rabha deposed that she knows the accused. She also knows the informant. The occurrence took place about 2 years ago. On the day of occurrence while the family members of the accused was absent, the accused called the victim girl for lightening in the temple. At that time family members of the victim girl was also absent. Thereafter, the

accused bolted the door and touched the private parts of her body and sat her on his lap. Thereafter, the girl fled away from the house of the accused and was weeping. The victim girl reported her. She is the member of Mahila Samitee. Being the member of Mahila Samitee they asked the girl. She narrated the incident. Though they went to the house of the accused, but the gate was found locked.

In cross-examination this witness stated that her house is situated at a distance of about ½ KM from the house of the accused. The house of victim girl is at a distance of about ½ KM from her house. Grand-mother of victim girl informed to their Mahila Samitee after 5 days from the day of occurrence. They took the girl to the police station. Ejahar was filed at their instance. She has not seen the incident.

9. PW2, Smti. Karuna Rabha stated that she knows the accused. She also knows the informant cum victim. After 5 days of occurrence the grand-mother of victim girl informed her that an occurrence took place in their house and called was to go to their house. They went to the house of the grand-mother of the victim. At that time the victim girl was present. On being asked by the members of Mahila Samiti victim girl said that accused called her for lightening in the temple, but the accused bolted the door and touched the private parts of her body and sat her on his lap. Thereafter, the girl fled away from the house of the accused and she requested us to take step against the accused. Though they went to the house of the accused, but the gate was found locked. Thereafter they took the victim girl to police station.

In her cross-examination she stated that her house is situated at a distance of about ½ KM from the house of the accused. She did not see the incident. After 5 days of occurrence the grand-mother of victim girl informed her that an occurrence took place in their house and called was to go to their house.

10. In the instant case the alleged victim girl, who is the vital witness, did not support the case of the prosecution on any material point. It is in the evidence of the victim that accused did nothing with her. She lodged the case due to misunderstanding. PW4, mother of the victim, also stated that at the time of incident she was not present at home. There is no whisper in the

evidence of victim that the accused person committed the alleged crime. Mother of the victim is reported witness. They have not implicated the accused in the alleged commission of offence. PW1 and PW2 are reported witness. They were informed about the incident after 5 days of the incident and in their instance ejahar was lodged. Victim has not supported their evidence. The ingredients of the offence punishable under Section 8 of POCSO Act are totally missing in the instant case.

- 11. 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.
- 12. 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 21st day of November /2017.

(S.Bora) Special Judge, Udalguri.

Dictated and corrected by me:-

(S.Bora) Special Judge, Udalguri.