IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon Present: Smti. B. Kshetry Addl. Sessions Judge, Kamrup, Amingaon Special Sessions (POCSO) case No.10/2018 U/S-6 of POCSO Act, 2012 State of Assam -Versus-1. Md. Amzad Ali s/o-Muntaz Ali resident of vill –Taparpathar P.S.-Chhaygaon Dist- Kamrup 2. Md. Goher Ali s/o- Mohar Ali resident of vill - Chouta P.S.-Chhaygaon Dist- Kamrup -----Accused Appearance: Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State A. Hoque, Advocate -----for the accused

Date of Argument: 08.10.2018

Date of evidence: 16.08.2018, 04.09.2018

Date of Judgment: 08.10.2018

JUDGEMENT

- 1. The Prosecution case in brief is that—about 4 months ago from the date of occurrence the granddaughter aged about 10 years of the informant—Asur Uddin Ahmed was working as a servant in the house of Amzad Ali. It is alleged on several occasions the said Amzad Ali along another namely—Goher Ali committed rape upon the minor granddaughter of the informant. And hence, this FIR.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 645/2017 U/S-4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused persons U/S-4 of the POCSO Act, 2012.
- 3. The case was duly committed and after hearing both the parties, charge was framed U/S- 6 of the POCSO Act, 2012 against accused persons—Amzad Ali and Goher Ali. The aforesaid charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as five (5) numbers of witnesses including the informant and the victim girl. Statement of the accused persons U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against them.

5. **POINT FOR DETERMINATION**

(I) Whether the accused persons at village Uparpathar under Chhaygaon P.S committed aggravated sexual assault upon the prosecutrix, aged below 16 years and thereby committed an offence punishable U/S 6 of the POCSO Act, 2012?

6. <u>DISCUSSION, DECISION AND REASONS THEREOF</u>

Perused the record. Prosecution examined 5 (five) witnesses. Let us go through the evidences available on record.

- 7. P.W.1, Prosecutrix has stated in her evidence that the informant is her grandfather. She knows the accused persons. She further stated that during the day time of the incident, she went to the shop of accused—Goher to bring tea leaves and sugar etc and returned back home. She also stated that she then went to the house of accused—Amzad Ali and he asked her to wash the dishes and sweep the floor. After doing so, she was slept in the house of Amzad as she felt sleepy. Thereafter, Amzad took her to a shop and purchased her dresses and sandal for the Idd festival. Then, Amzad and his family members sent her back to her house. Further, she deposed that she do not know as to why her grandfather gave the case. Police took her before the magistrate for recording her statement. Ext.1 is the statement.
- 8. In her cross-examination, she deposed that she forgot as to what she stated in her statement.
- 9. P.W.2, Asuruddin Ahmed is the informant of this case. He deposed that victim is his granddaughter. He knows the accused persons. The incident took place on 06.08.2017 at Soutara under Chhaygaon P.S. On that day in the evening P.W.2 met his granddaughter (victim) in the Soutara bazar. She was sitting there in front of a shop where she (victim) told him that the accused persons raped her and after hearing this P.W.2 lodged the ejahar. Ext. 1 is the ejahar. Ext. 1 (1) is his signature. Police took her to the doctor for her medical examination and also brought her before the Magistrate for recording her statement. Police also recorded his statement.
- 10. In his cross-examination, P.W.2 has deposed that Soutara bazar is located at a distance of 5/6 km away from his house. He further deposed that he found his granddaughter sitting in front of a tea shop and she was crying. Thereafter he gave the ejahar. P.W.2 further deposed that he gave the ejahar only on suspicion and stated that he came to know later that no such incident had taken place on the day of incident. P.W.2 further stated that it is not written in the ejahar that his granddaughter told him that she was raped by the accused persons.
- 11. P.W.3, Abdul Hoque has deposed in his evidence that he knows the informant as well as the accused of this instant case. Also he knows the victim of this

case. He further deposed in his evidence that he did not know about the incident nor heard anything about the incident.

- 12. P.W.4, Musstt. Johura Khatun has deposed in his evidence that he did not know the informant and the victim. He only knows the accused of this instant case. He further deposed in his evidence that he did not know about the incident nor heard anything about the incident.
- 13. P.W.5, Akram Hussain has deposed in his evidence that he knows both the accused and the informant. He also knows the victim girl. Further he deposed that he heard from the villagers and the informant that the accused persons had caught the granddaughter (victim) of the informant but they did not do anything with her.
- 14. In his cross-examination, he deposed that police did not record his statement.
- 15. I have heard the arguments of both the sides. Perused the evidences on record.
- 16. To prove Section 6 of the POCSO Act, prosecution must have to give cogent, reliable evidence regarding the allegation leveled against the accused person though there is presumption of culpable mentality against the accused U/S-29 and 30 of this Act.
- Now, in this instant case, the evidence of P.W.1 (victim) is very much contradiction. Her evidence makes it clear that the accused persons did not do anything with her on the date of occurrence. And she did not know why grandfather (P.W.2) gave the case against the accused person. Other witnesses did not know about the incident nor heard anything about it. P.W.2 (informant) disclosed that ejahar was given against the accused person on suspicion and he revealed that later he came to knew that the accused did not do anything with the victim. So, prosecution has failed to bring home, the charge U/S-6 of the POCSO Act. Accused persons are not found guilty.
- 18. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused persons—Md. Amzad Ali and Md. Goher Ali.

Accordingly, the accused persons are held not guilty and they are hereby acquitted of the offence U/S-6 of the POCSO Act, and set at liberty forthwith. Bailor is discharged from the liabilities of the bail bond.

19. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 08th day of October, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Prosecutrix

P.W.2, Asuruddin Ahmed

P.W.3, Abdul Hoque

P.W.4, Musstt. Johura Khatun

P.W.5, Akram Hussain

Prosecution Exhibit

Ext.1 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix Ext.2 is the ejahar.

Special Judge, Kamrup, Amingaon