IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present: Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

<u>Special (POCSO) 27/2019</u> <u>U/S 354/376-D IPC R/W Section 6/8 of POCSO Act</u>

State of Assam

-Vs-

1. Bikram Praja,

2. Sanjib Praja &

3. Binan Praja.....Accused persons.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. T.C. Boro, Learned Advocate.

Date of Evidence : 16-11-19: 21-11-19.

Date of Argument : 26-11-2019.

Date of Judgment : 29-11-2019.

JUDGMENT

- 1. The prosecution case in brief is that on 01-11-18, at about 12 pm, the accused persons committed rape upon the victim girl in the jungle of Orangajuli Tea garden. Hence, on 02-11-18, the father of the victim girl lodged an FIR with the Officer-in-Charge of Paneri P.S.
- 2. On the basis of the FIR, Paneri PS Case No. 95/18, under Section 376-D IPC was registered and later on added Section 354 IPC R/W Section 06 of POCSO Act and after completion of investigation Police submitted charge-

sheet under Section 376-D IPC R/W Section 06 of POCSO act against the accused persons Sanjib Praja and Binan Praja and Section 354 IPC R/W Section 08 of POCSO Act against accused Bikram Praja.

- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offence under Section U/S 354/376-D IPC R/W Section 6/8 of POCSO Act, Hon'ble Special Judge, Udalguri framed charge separately thereunder and the ingredients of charge under Section 354 IPC R/W Section 8 of POCSO Act were read over and explained to the accused Bikram Praja and the ingredients of charge under Section 376-D IPC R/W Section 6 of POCSO Act were read over and explained to the accused persons Sanjib Praja and Binan Praja to which all the three accused persons pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 21-11-19, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 05(five) witnesses:

PW1- Dr. Kankan Thakuria.

PW2- Victim-A.

PW3- Birsu Praja.

PW4- JMFC Smti. Kumari Arti.

PW5- Rajat Talukdar.

- 5. The statement of the accused persons had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the points for determination in the instant case are set up as follows:-

- (I) Whether the accused Bikram Praja kidnapped victim-A with intent to cause the said victim to be secretly and wrongfully confined?
- (II) Whether the accused Bikram Praja committed sexual assault upon victim-A, aged about 18 years?
- (III) Whether the accused persons Sanjib Praja and Binan Praja committed gang rape upon victim-A?
- (IV) Whether the accused persons Sanjib Praja and Binan Praja committed aggravated penetrative sexual assault upon victim-A, aged about 18 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T.C. Boro.
- 8. Learned Addl. P.P. has submitted that the prosecution has adduced cogent, reliable and consistent evidence to bring home the charges leveled against the accused. The accused had committed sexual assault upon the minor girl and he is liable to be punished under Section 8 of POCSO Act.
- Per contra learned defence counsel has argued that no ingredients of offence under Section 354/376-D IPC R/W Section 08/06 of POCSO Act, had been established in the present case.
- 10. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 11. PW1 is Dr. Kankan Thakuria. In his evidence PW1 had deposed that on 2.11.2018, he was serving as M. & H.O.1 at Udalguri Civil Hospital. On that day, he examined victim-A, under Dimakuchi P.S. on police requisition in reference to Panery P.S. case No.95/18 U/S 376(1) IPC. The girl was

escorted by WPC-442 Anjumani Deka. On examination, he found the following:-

Identification Mark:- (1) one black mole on left cheek.

(2) Scar 2 x3 cm on right cheek.

Physical examination:-

Height- 143 cm, weight- 35 Kg, teeth- 28 Nos., axillary hair- present, pubic hair- present, breast- developed, hymen- absent, vaginal injury- not seen, clothing- Pink frock, LMP 26.10.2018.

Smear examination shows no spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray examination of the right wrist, elbow and iliac crest vide plate No.RXIC-A577 dated 6.11.2018 reported by Radiologist Dr. A. Deka shows radiological age 16 to 11 years.

Urine for pregnancy test on 28.11.2018 reported by Panery SHC shows negative .

Ultrasonography of abdomen on 6.11.2018 by Sinologist, Radhika X-Ray and Imaging Centre, Mangaldai reported as normal echo feature of organ imaged.

PW1 had deposed that in his opinion:

- 1. Radiological age approximate 16-17 years.
- 2. USG reveals normal echo feature of organ imaged.
- 3. No mark of violence or vaginal injury seen
- 4. No spermatozoa in smear.

Ext.1 is the report and Ext.1(1) is the signature of PW1. Cross examination of PW1 had been declined by the defence.

12. PW2 is the victim girl of this case. In her evidence PW2 had deposed that about one year ago one day she went to a nearby shop at about 12 PM. While she was proceeding to shop she saw the accused persons. On seeing her they forcefully asked where she was going. But she did not reply to their query. Thereafter, she reported the matter to her father. Her father lodged an FIR against the accused out of anger for calling her by the

accused while she was proceeding to shop. The accused neither misbehaved with her nor molested her sexually. Her father out of anger lodged the FIR. In cross-examination, PW2 had stated that the accused persons did not misbehave with her so she had no grudge against them.

- 13. PW3 is Birsu Praja, informant and father of the victim girl. In his evidence PW3 had deposed that about one year ago, one day, his daughter went to a nearby shop from home. After returning from shop his daughter told him that the accused persons asked her where she was going. So, he thought that accused persons misbehaved with the victim girl and, therefore, out of indignation he lodged the FIR. Except this nothing happened to his daughter with the accused persons. The accused persons did not try to outrage her modesty nor made any attempt to sexually harass her. He put his thumb impression in the FIR which was written by a scribe. In cross-examination, PW3 had stated that he lodged the FIR merely out of indignation for calling his daughter by the accused persons.
- 14. PW4 is Munsiff-cum-JMFC Smti. Kumari Arti. In her evidence PW4 had deposed that on 2.11.2018, while she was working as Judicial Magistrate First Class, Udalguri. On that day the learned Sessions Judge, Udalguri, directed her to record the statement of the victim U/S 164 Cr.P.C. in connection with Panery P.S. case 95/2018 U/S 376 D IPC. On being produced she recorded the statement of the victim U/S 164 Cr.P.C. in accordance with law. After recording the statement of the victim the same was read over to her and on being satisfied that the statement was recorded as per her version she put her thumb impression before PW4. Ext.2 is the statement of the victim U/S 164 Cr.P.C. Ext.2(1) is the signature of PW4. In cross-examination, PW4 had stated that as per the victim she was 18 years old at the time of recording her statement.
- 15. PW5 is Inspector Mantu Talukdar. In his evidence PW5 had deposed that on 29.1.2019, he was posted as O/C, Panery PS. On that day, he received

the case diary of Panery PS case No. 95/18 from the I.O. Anil Basumatary after completion of preliminary investigation of the case. After perusal of the case diary he found that the investigation has been completed by the said I.O. and accordingly, having found prima-facie case against the accused persons Bikram Praja, Sanjib Praja and Binan Praja he laid the charge-sheet U/S 354 IPC R/W Sec. 8 of POCSO Act. Ext.3 is the charge-sheet. Ext.3(1) is the signature of PW5. Cross-examination of PW5 had been declined by the defence.

- 16. On appraisement of the evidence on record it is found that neither the victim girl nor her father, the informant, has adduced evidence implicating the accused persons in the allege offence of sexual assault. PW1 had deposed that out of anger for calling the victim by the accused persons, he lodged the FIR. The accused persons neither misbehaved with the victim nor molested her sexually. Corroborating the evidence of PW1; PW2, the victim girl has deposed in the same tune that the accused persons did not try to outrage her modesty nor made any attempt to sexually harass her. The accused persons only asked PW2 where she would go while she was going to a nearby shop. Moreover, the medical evidence is also silent as to any incident of sexual assault.
- 17. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 354/376-D IPC R/W Section 6/8 of POCSO Act against the accused persons beyond all reasonable doubt.
- 18. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

19. In the result, the accused persons Bikram Praja, Sanjib Praja and Binan Praja are found not guilty under Section 354/376-D IPC R/W Section 6/8 of

POCSO Act and acquitted of charges under Section 354/376-D IPC R/W Section 6/8 of POCSO Act and set with liberty forthwith.

- 20. Bail bond executed by the accused persons and the sureties shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.
- 21. Judgment is signed, delivered and pronounced in the open court today the 29th day of November, 2019.

Dictated and Corrected

(N.Talukdar) Addl. Sessions Judge Udalguri (N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI.

Special (POCSO) 27/2019 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : Medical report.

Ext.-2 : Statement of the victim U/S 164 Cr.P.C.

Ext.-3 : Charge-sheet.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Kankan Thakuria.

PW2- Victim-A.

PW3- Birsu Praja.

PW4- JMFC Smti. Kumari Arti.

PW5- Rajat Talukdar.

(G) Defence witnesses : Nil.(H) Court witnesses : Nil

(N.Talukdar) Addl. Sessions Judge. Udalguri.