IN THE COURT OF SPECIAL JUDGE (F.T.C), LAKHIMPUR, NORTH LAKHIMPUR.

PRESENT

Sri P.C. Kalita, A.J.S., Special Judge (F.T.C.), Lakhimpur, North Lakhimpur.

Special (POCSO) Case No.92/2019. *U/s- 6 of POCSO Act.*

State of Assam,
-VersusSri Kushal Pagag Chayengia, <u>Accused</u>.

APPEARANCE

For the State : Mr. M. Gogoi, Ld. Special P.P. For the Accused : Mr. S. Patir, Ld. Advocate.

Date of evidence : 30.11.2019, 03.12.2019, 04.12.2019.

Argument heard on : 04.12.2019. Judgment delivered on : **04.12.2019**.

JUDGMENT

1. The prosecution case, inter-alia, in brief, is that on 18.08.2019, informant Smti Karsoni Payung lodged an ejahar at Ghilamora P.S. alleging that on 16.08.2019 at about 10:00 a.m. the accused person namely, Sri Kushal Pagag had committed forceful rape on her daughter i.e. the prosecutrix (aged 7 years), in the jungle near Mora-Subansiri river, while she after going to catch fishes in Subansiri river, had sent back her victim daughter with the accused person to her house and only on the previous day, i.e. on 15.08.2019, her victim daughter had narrated about the said incident, in detail, at her house.

- 2. On receipt of the ejahar, the O/C of Ghilamora P.S. registered a case vide Ghilamora P.S. Case No.107/2019 dtd. 18.08.2019 u/s- 376 of IPC, R/w- Sec.4 of POCSO Act and then the police conducted the investigation of the case and after completion of the investigation submitted Charge-sheet u/s- 376 of IPC, R/w- Sec.4 of POCSO Act against the accused person Sri Kushal Pagag Chayengia.
- 3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, a charge u/s- 6 of POCSO Act is framed against the accused, the same is read over and explained to him to which he has pleaded not guilty.
- 4. During trial prosecution has examined as many as 6(six) witnesses. Considering the stand of the witnesses examined and at the instance of Ld. Special P.P., the prosecution evidence is closed. The accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINTS FOR DETERMINATION:**

i) Whether the accused, on 16.08.2019 at about 10:00 a.m. near the forest of Mora Subansiri river under Ghilamora P.S., after inducing the prosecutrix, daughter of informant Smti Karsoni Payung, had committed aggravated sexual assault on her person (aged about 7 years), and thereby committed an offence punishable under section 6 of POCSO Act, as alleged?

DISCUSSIONS, DECISION AND REASONS THEREOF:

6. I have carefully perused the evidence and the materials

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available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.

- 7. PW.1, the prosecutrix, stated that the informant is her mother and the accused person is her maternal uncle in relationship. He cannot remember the date of alleged occurrence. On the day of occurrence, she had gone to catch fishes in a pond nearby her house and she was accompanied by her accused maternal uncle at that time. She had caught some fishes. Thereafter, the accused person had gone away leaving her there and then, she went to her house by crying. As the accused person had left her away, so her mother, on anger, lodged an ejahar against the accused person. The police recorded her statement, got her medically examined and also got her statement recorded before the Court.
- 8. PW.2, Smti Karsoni Payung (informant- cum mother of victim), stated that her victim daughter is now 7 years old. The accused person is her cousin brother in relationship. The occurrence took place about 4/5 months back, at about 3:00 p.m. On that day, she along with her victim daughter and the accused person had gone to catch fishes. During catching fishes, she had gone away from her victim daughter keeping the accused person with her (victim). On her returning home, she found her victim daughter in crying and on being asked, her daughter told her that the accused person had gone away leaving her near the river and so, on fear, she was crying. Next day, when her daughter told that she could not urinate properly, so she lodged the ejahar against the accused person on suspicion. The Police recorded her statement, got her victim daughter medically examined and sent her victim daughter to the Court for recording her statement. The police seized one inner wear of her victim daughter. The police also got her

- (PW2) statement recorded before the Court. At the time of recording the statement of her victim daughter before the Court u/s- 164 of Cr.P.C., she had assisted her daughter as interpreter.
- 9. PW.3, Sri Manikanta Payung (husband of informant), stated that the victim girl is his daughter, who is now 7 years old, reading in class-I. He knows the accused person, who is her brother-in-law. The occurrence took place, during the day time, on 18th August of this year. On the alleged day, his victim daughter had gone along with her mother to catch fishes and at that time, the accused person also accompanied them. Later on, his wife had gone to some other place for catching fishes, keeping the accused person with his victim daughter. But, subsequently, while the accused person had also left his daughter there, then, his daughter started crying. Thereafter, his wife lodged this case on suspicion against the accused person.
- 10. PW.4, Sri Suresh Payung, stated that the informant is his maternal aunt and the victim girl is his cousin sister. He knows the accused person. The occurrence took place about 3 months back. He does not know anything about the alleged incident. He also does not know as to why the police had recorded his name and address.
- 11. PW.5, Sri Lilaram Payung (son of informant), stated that the victim girl is his younger sister and the accused person is his maternal uncle in relationship. The occurrence took place about 3 months back. At the time of occurrence he was not at home. He does not know anything about the alleged incident.
- 12. PW.6, Sri Bidyasagar Payung (son of informant), stated that the victim girl is his younger sister and the accused person is his maternal uncle in relationship. The occurrence took place about 3 months back. At the time of occurrence he was at Arunachal Pradesh. He does not know anything about the alleged incident.

Appreciation of evidence: (Offence u/s- 6 of POCSO Act).

15. Here, the prosecutrix (prime witness) is examined as PW1 in the instant case. Her deposition is that on the day of occurrence, at about 10:00 a.m., she had gone to catch fishes in a pond nearby her house, while her accused maternal uncle accompanied her, but after sometime, the accused person had gone away leaving her there and therefore, she got frightened and returned home by crying.

Thus, it is seen that the victim herself, in her deposition, nowhere uttered a single word that the accused had committed any sexual assault on her person. In cross, PW1 (victim) clearly stated that she gave her statement before the Court as instructed by other.

Her allegation is that the accused had gone away leaving her alone at the place of occurrence, which does not attracts the provisions of Section 6 of POCSO Act.

16. PW.2 is the informant- cum mother of the victim (PW1). She simply stated that she lodged the case against the accused person only when he came to know from her victim daughter that she (victim) was unable to urinate properly on next morning of going her for fishing.

PW2, in cross, clearly stated that due to some misunderstanding, this case has been lodged against the accused person.

- 17. PW.3, (father of the victim), PW.4, PW5 and PW6 (all are neighbours) are hearsay witnesses and they do not support at all the prosecution case.
- 18. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove its case u/s- 6 of POCSO Act against the accused person beyond all reasonable doubts.

Hence, I acquit the accused person from the said offence.

- 19. The accused person is set at liberty forthwith.
- 20. The seized articles, if any, be destroyed in due course of time.
- 21. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 4th day of December, 2019.

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Transcribed & typed by me: Sri D. Chetia, (Steno)

APPENDIX:

Prosecution witnesses:

PW.1, the prosecutrix

PW.2, Smti Karsoni Payung

PW.3, Sri Manikanta Payung

PW.4, Sri Suresh Payung

PW.5, Sri Lilaram Payung

PW.6, Sri Bidyasagar Payung

Prosecution exhibits:

Nil

Defence witnesses:

Nil.

Defence exhibits:

Nil

(P.C. Kalita)
Special Judge (F.T.C),
Lakhimpur, North Lakhimpur.