IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

Present : Smti. S. Bora,

Sessions Judge, Udalguri.

Reference : Special (POCSO) Case No. 29/2017.

Complainant : State

Vs

Accused : 1. Sibu Gowala,

2. Om Kumar Gowala.

Charges: U/S 8 of POCSO Act.

Dates of hearing : 9.2.2018

Date of Judgment : 9.2.2018.

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

For the accused : Mr. K. C. Dutta, Advocate.

<u>JUDGMENT</u>

In this case accused Sibu Gowala and Om Kumar Gowala put for trial for allegation of charge U/S 8 of POCSO Act.

- 2. The various fact leading to institution of this case, according to FIR, in brief, is that on 22.2.17 the accused persons tried to sexual harassment on the 5 years daughter of informant Momita Bhiyar, which the victim informed to the informant on the next day morning. Hence this prosecution case.
- 3. The FIR was filed by informant, Momita Bhiyar before the O/C, Dimakuchi PS. On receipt the ejahar the O/C, Dimakuchi P.S. registered the case vide Dimakuchi P.S. case No. 15/17 U/S 8 of POCSO Act. After completion of usual investigation the O/C, Dimakuchi P.S. sent up the case for trial against the accused persons U/S 8 of POCSO Act.

- 4. On being production of the accused persons before this court after hearing both parties charge framed U/S 8 of POCSO Act. Particulars of the charge is read over and explained to the accused, to which they pleaded not guilty and claims to be tried.
- 5. To substantiate the case, prosecution examined as many as four witnesses which include the informant and the victim. Ld. Counsel for prosecution submitted to close the evidence as the statement of informant and victim, who are the vital witness in this case stated nothing about the incident. So it would be futile to summon the other witnesses.

On close scrutiny of the record including the statement of witnesses recorded so far, I think prosecution case would not develop even if examine the other remaining witnesses.

It has been held in S. Rama Reddy Vs. R. Ramy Reddy, reported in AIR (SC) (2008) 2006 that speedy trial is the fundamental right of the accused person.

Considering the aforesaid view coupled with the aforesaid mandate of the Hon'ble Apex Court, prosecution evidence is closed.

Examination of accused persons U/S 313 Cr.P.C. is dispensed with.

6. I have also heard argument put forward by ld. Counsel for both sides.

POINTS FOR DETERMINATION

7. The point for decision in this case are-

Whether the accused persons on or about 22.2.17 at the evening time at Borangajuli TE under Dimakuchi PS committed sexual assault upon victim Miss Sulekha Bhuyar, aged about 5 years?

- 8. To arrive at a judicial decision, let me appreciate the evidence on record.
- 9. PW4, Sulekha Bhuyar is the victim in this case. She deposed that she knows the accused persons. An the day of occurrence accused went to their house. Out of fear, since she was suffering from fever, she cried. Accused did nothing with her. She was produced before the court for recording her statement. She put her thumb impression in the statement.
- 10. PW.1, Smti. Momita Bhuyar who is the informant and mother of the victim deposed that the accused persons present in the dock are known to her. The occurrence took place before one year ago. Sulekha is her daughter. On the day of incident while her daughter was playing the accused persons Sibu Gowala and Om Kumar Gowala came to their house and could not do anything. When her daughter started crying the village people raised hue and cry. On being asked, her daughter told that accused persons did not do anything on her. She lodged FIR, on being told by village people, where she put her thumb impression.

In her cross-examination she stated that she did not see the incident. She does not know the contents of FIR. Accused persons did not commit rape on her daughter. She does not want to proceed with the case.

- 11. PW2, Smti. Arjeni Sabor deposed that the accused persons present in the dock are known to her. She knows the informant and victim. The occurrence took place before one year ago. On the day of incident while after returning from her daily work, she was informed that rape was committed on Sulekha Bhuyar. On being asked the girl told her that no rape was committed on her she cried out of fear.
- 12. PW3, Smti. Bharso Sabor deposed that the accused persons present in the dock are known to her. She knows the informant and

victim. The occurrence took place before one year ago. On the day of incident while after returning from her daily work, she was informed that rape was committed on Sulekha Bhuyar. On being asked the girl told her that no rape was committed on her she cried out of fear.

- 13. These much is the evidence of prosecution.
- 14. In this case, as discussed above, the PW4, who is the victim of this case stated clearly that accused did nothing with her. Similarly, PW1, informant cum mother of the victim stated that on the day of incident while her daughter was playing the accused persons Sibu Gowala and Om Kumar Gowala came to their house and could not do anything. When her daughter started crying the village people raised hue and cry. On being asked, her daughter told that accused persons did not do anything on her. She lodged FIR, on being told by village people. PW2 and PW3 also stated in the same tune as PW1. In the medical report doctor opined that no sexual part injury seen. No any other injury. There is no any iota of evidence to show that accused persons committed the crime. Even there is no any circumstance to infer the accused persons in the alleged charges.
- 15. As such, I have, therefore, no hesitation to hold that accused persons are entitled to get benefit of doubt. As such, acquit them and set at liberty forthwith.

Given under my hand and seal of this court on this the 9^{th} day of February, 2018 at Udalguri Court.

(S. Bora) Special Judge, <u>Udalguri, BTAD</u>.

Dictated and corrected by me and each page bears by signature.

(S.Bora) Special Judge, <u>Udalguri, BTAD</u>.