IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.25/2018

U/S- 341/363/376/511 of IPC, R/W Section 8 of the POCSO Act, 2012.

State of Assam

-Versus-

Sri Chandrajyoti Das

s/o-Sri Achyut Das

Resident of vill –Bangaltola

P.S.-Hajo

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor

-----for the State

Mr. Rajib Sarma, Advocate

-----for the accused

Date of evidence:06.10.2018, 08.10.2018, 05.04.2019.

Date of Argument: 20.04.2019, 04.05.2019

Date of Judgment: 06.05.2019

JUDGMENT

- 1. The Prosecution case in brief is that—on 01.03.2018 the complainant Sri Upin Das lodged an ejahar alleging that on that very day, the accused—Chandrajyoti Das tried to kidnap the minor daughter of the informant when she was returning from 'Satyanya Dol Utsav' held in his village and also tried to rape her. Hence, this case.
- 2. On the basis of the said ejahar, Hajo P.S Case No. 158/2018 U/S-341/363/376/511 IPC, R/W Section 8 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 person U/S- 341/363/376/511 of IPC, R/W Section 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 341/363/376/511 of IPC, R/W Section 8 of the POCSO Act, 2012, against accused person— Chandrajyoti Das. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined five witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and declined to adduce evidence.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 01.03.2018 at about 8 p.m wrongfully restrained the Complaint's minor daughter and thereby committed an offence punishable U/S 341 IPC?
- (II) Whether the accused person on the same date, time and place kidnapped the minor daughter of the informant—Upin Das from his lawful guardianship and thereby, committed an offence punishable U/S 363 of IPC?
- (III) Whether the accused person on the same date, time and place attempted to commit rape on the minor daughter of the Complainant

and thereby committed an offence punishable under section 376/511 of IPC ?

(IV) Whether the accused person on the same date, time and place committed sexual assault upon the Complainant's minor daughter and thereby committed an offence punishable under section 8 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. I have carefully perused the case record. Heard Ld. Counsels for both the sides. The learned Counsel for the accused submitted that the accused has been falsely implicated in this instant case. He further argued that there are no eye witness to the occurrence.
- 7. Let us go through the evidences on record to find out if the prosecution side has proved the case.
- 8. P.W.1, prosecutrix deposed in her evidence that informant of this case is her father. She knows the accused person. The incident took place on 01.03.2018 at about 8.00 p.m. She was 16 years old at the time of incident. She further deposed that on the date of occurrence, she had gone to attend a 'Dol Utsav' held in their village and at 8.00 p.m, she was returning home by walking along with other people. She was walking behind her family members, consisting of her sister—Rinku Das, her Aunt—Jaya Deka and some of her friends, then the accused came and he suddenly restrained her on the way and pulled her and took her to the road side. The accused pulled the chaddar mekhela worn by her and he tried to rape her. She shouted out. On arrival of the local villagers, the accused fled away. When her father came to know about the incident, he filed the ejahar. Police recorded her statement and brought her before the Magistrate for recording her statement. Ext.1 is the statement and Ext. 1 (1 & 2) are her signatures.

In her cross-examination, P.W.1 has stated that accused is her cousin brother and neighbour also. Accused wanted to have love affair with her but she refused him. So, there was a conflict between both the family members over this matter. P.W.1 further disclosed that on the night of occurrence, she was coming with a group consisting

of around five persons and there were lights near the place of occurrence i.e near 'Dol Utsav'.

9. P.W.2, Sri Upin Das is the informant of this case. He has stated that victim is his daughter and he knows the accused person. The incident took place on 01.03.2018 at about 8.00 p.m. Victim was aged about 15 years at the time of incident. On that day, while the victim was returning home after attending the 'Dol Utsav' in the village then the accused restrained her on the way, pulled her by hand and took her to the road side. He tried to rape her but after hearing her hue and cry, the passerby's' arrived and the accused fled away. Thereafter, P.W.2 lodged the ejahar. Ext.2 is the FIR and Ext. 2 (1) is his signature.

In his cross-examination P.W.2 deposed that as he is an illiterate person the ejahar was not written by him, it was written by one 'Mohori' in the police station. He only put his signature thereon. Accused is their relative.

- 10. P.W.3, Smti Nitya Das @ Rita Das. She has stated in her evidence that informant is her husband. Victim is her daughter. She also knows the accused person. The incident took place on 01.03.2018 at about 8.00 p.m. Victim was aged about 15 years at the time of incident. On that day, while the victim was returning home after attending the 'Dol Utsav' in the village, then the accused restrained her on the way, pulled her by hand and took her to the road side. He tried to rape her but after hearing her hue and cry, the passerby's' arrived and the accused fled away.
- 11. P.W.4, Smti Phuleswari Das has deposed that informant is her brother-in-law. Victim is her niece. She knows the accused person, who is their relative. The incident took place on 01.03.2018 at about 8.00 p.m. Victim was 14/15 years at the time of incident. On that day, while the victim was returning home crying after attending the 'Dol Utsav' in the village. Then, she heard that the victim telling her parents that on the way, the accused tried to rape her. Thereafter the informant lodged the ejahar.
- 12. P.W.5, S/I Binod Kr. Das has deposed in his evidence that—on 01.03.2018, he was serving as i/c Ramdia O.P under Hajo P.S. On that day at 10.30 p.m after receiving an ejahar lodged by one Sri Upin Das, he made the G.D. Entry bearing No. 09/2018 dated 01.03.2018. Thereafter at 11.20 p.m he visited the place of occurrence along with

other staffs and recorded the statement of informant and other witnesses including the victim girl. He brought the accused—Chandrajyoti Das to the P.S for interrogation. He also prepared the sketch map. Ext.3 is the sketch-map and Ext. 3(1) is his signature. Next morning, P.W.5 forwarded the said ejahar to O/C, Hajo P.S, who registered a case bearing Hajo P.S Case No. 158/2018 U/S-341/363/376/511 of IPC R/W Section 8 of POCSO Act, 2012 and directed him to investigate the case. And accordingly, P.W.5 recorded the statement of the accused and arrested him and produced him before the court. He send the victim for her medical examination. But she refused to do so. He also sent the victim to the Court for getting her statement recorded U/S-164 Cr. P.C before the Magistrate. Thereafter, P.W.5 completed the investigation and on finding sufficient materials against the accused, he submitted charge sheet against the accused Chandrajyoti Das U/S-341/363/511 of IPC R/W Section 8 of POCSO Act, 2012. Ext.4 is the charge-sheet and Ext. 4 (1) is his signature.

In his cross-examination P.W.5 stated that P.W.1 did not state before him that she was walking alone behind her family members consisting of her sister—Rinku Das, her Aunt—Jaya Deka and some of her friends. He did not record the statement of Rinku Das and Jaya Deka. Informant did not take him to the place of occurrence. He met him in the place of occurrence. He did not find any eye witness of the occurrence. He did not seize any article from the place of occurrence. P.W.1 stated before him that the accused was in love with her but not she.

- Now, in this instant case, apart from the victim (P.W.1) there are no eye witness to the incident. According to P.W.1, she was returning home alongwith other people. Her evidence reveals that at the time of occurrence, she was walking behind her sister—Rinku Das and Aunt—Jaya Deka. Then, the accused came and he restrained her. P.W.1 has alleged that the accused pulled her and took her by the road side. He then pulled her mekhela-chaddar and tried to rape her. But she shouted out and the villagers arrived and accused fled away.
- 14. But neither his family members' i.e sister and Aunt nor any of the villagers have been examined by the prosecution side to corroborate the evidence of P.W.1.

I/O has confirmed in his cross examination that P.W.1 did not state before him that she was walking alone behind her family members consisting her sister—Rinku Das, her Aunt—Jaya Deka and some of her friends.

- 15. P.W.2 and P.W.3 are the parents of the victim (P.W.1) and they are hearsay witnesses. According to them victim (P.W.1) told them all about the incident. P.W.4 is the independent witness. She stated that she heard P.W.1 telling the incident to her parents. So, she is also hearsay witness.
- 16. Now, question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act. **Sexual Assault** is defined **U/S 7 of POCSO Act** as "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act.
- 17. It is in the evidence of P.W.1 (prosecutrix) that while she was coming towards her house with a group, the accused took her to the road side and pulled the chaddar mekhela worn by her and he tried to rape her. In her statement U/S-164 Cr. P.C. (Ext.1), the victim (P.W.1) did not state that the accused pulled her mekhela-chaddar and tried to rape her. She has simply stated that the accused pulled her by the hand and took her by the road side and tried to behave badly with her. So, the evidence of P.W.1 before the court is contradicting with her statement U/S-164 (Ext.1).
- 18. Again, it has come out from the evidence of P.W.1, that she was coming with a group at the relevant time and there were lights near the place of occurrence. Her evidences also reveals that on hearing her shouts, the village people arrived but no such people have been examined by the prosecution to support her evidence. This raises a doubt regarding the occurrence. So, the sole evidence of the victim (P.W.1) cannot be relied upon. Her evidence does not inspire confidence at all. Therefore, considering the facts and circumstances of the case, the accused is entitled to get the benefit of doubt.
- 19. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused person—Chandrajyoti Das is held not guilty and he is acquitted of the offences U/S-341/363/376/511 of IPC, R/W Section 8 of the POCSO Act, 2012 and set at liberty forthwith.

- 20. His bail bond stands cancelled. Bailor is discharged from the liabilities.
- 21. The case is disposed of.
- 22. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 06th day of May, 2019.

Special Judge, Kamrup, Amingaon

A**PPENDIX**

Prosecution Witness:

P.W.1, prosecutrix

P.W.2, Sri Upin Das

P.W.3, Smti Nitya Das @ Rita Das

P.W.4, Smti Phuleswari Das

P.W.5, S/I Binod Kr. Das

Prosecution Exhibit

Ext.1 is the statement

Ext.2 is the FIR

Ext.3 is the sketch-map

Ext.4 is the charge-sheet

Special Judge, Kamrup, Amingaon