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

District: Kamrup, Amingac

Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.20/2017

U/S-8 of POCSO Act, 2012

State of Assam

-Versus-

Nur Mahammad Ali

s/o-Rofique Ali

Resident of vill -Helesa

P.S.-Hajo

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State

Md. Anowar Hussain, Advocate ------for the accused

Date of evidence: 21.02.2018, 05.10.2018, 02.11.2018, 26.11.2018

Date of Argument:26.11.2018

Date of Judgment:26.11.2018

JUDGEMENT

- 1. The Prosecution case in brief is that—on 13.07.2017 the Complainant lodged an ejahar alleging that on 29.06.2017 at about 12 noon while the minor daughter of the informant, aged about 14 years was cooking in the kitchen alone, then the accused—Nur Mahammad Ali entered inside the house and he tried to commit rape upon her. And hence, this FIR.
- 2. On the basis of the said ejahar, Hajo P.S Case No. 530/2017 U/S-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-8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 8 of the POCSO Act, 2012 against accused— Nur Mahammad Ali. The aforesaid charge 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 as many as six (6) numbers of witnesses including the informant and victim. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 29.06.2017 at about 12 noon at village Helasha under Hajo P.S tried to rape the minor daughter of the informant when she was cooking alone inside her house, and thereby committed sexual assault on the minor victim girl within the meaning of section 7 of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S-8 of the POCSO Act, 2012?

6. **DISCUSSION, DECISION AND REASONS THEREOF**

Perused the record. In support of the case, prosecution examined six (6) witnesses.

- 7. Let us go through the evidences available on record.
- 8. P.W.1, Md. Rustom Ali is the informant of this instant case. He knows the accused person. Victim is his daughter. He stated that on the day of the incident he was in Chesa Bazar for marketing and his wife had gone to the hospital. His daughter (prosecutrix) was alone in the house cooking lunch for him. At that time, accused came and caught hold of her, tore her clothes and attempted to do bad act with her. This fact was reported to him by the prosecutrix when he returned back to his home. Thereafter, P.W.1 reported the incident to the village headman—Tayab Ali, who told him that the village enquiry will be made regarding the incident. But the villagers could not resolve the dispute and lodged the ejahar after 14 days of the occurrence. P.W.1 disposed that prosecutrix was 14 years old at the time of occurrence. Material Ext. 'A' is the cloth (kurta) of the prosecutrix which was seized by the police and same is seen by him in the Court.
- 9. In his cross-examination, P.W.1 stated that there are altogether seven family members and on the day of the incident his parents had gone to his sister's house. There are no any houses in and around their house campus. This witness disclosed that his son and the accused took lease of the ponds near the village jointly for the purpose of fishing. He denied that he lodged a false case against the accused after 14 days of the occurrence. He deposited the seized kurti at the police station while he lodged the FIR.
- 10. P.W.2, is the prosecutrix and the daughter of the informant. She knows the accused person, who is their neighbor. She stated that the incident took place on 29.06.2017 during day time. She was 14 years old at that time. Prosecutrix stated that she was cooking food alone in house and the parents were not at home. Her younger brother had gone to school. Then the accused entered the house caught hold of her and he hugged her. Thereafter, he left their house. This witness disclosed that accused is frequent visitor to their house and she addresses him as 'Dada'. When her father

came to know about the incident, he lodged the ejahar. Police recorded her statement and was taken her for medical examination and she was brought before the Magistrate for recording her statement. Ext. 1 is her statement U/S-164 Cr. P.C. Ext. 1 (1&2) is her signatures. she disclosed that she gave her statement before the Magistrate as tutored by her Aunt

- 11. In her cross-examination, P.W.2 has stated that her father lodged the ejahar against the accused out of some misunderstanding without enquiring anything from her. She further stated that her father heard the incident from her friend-Asmina Begum, whom she had told the incident. She revealed that no incident as alleged in the ejahar took place on the date of occurrence.
- 12. P.W.3, Sofjan Begum. She knows both the parties but she did not know anything about the incident.
- 13. P.W.4, Asmina Begum stated that she did not know anything about the incident.
- 14. P.W.5, Tayab Ali has stated that he knows both the parties. And stated that he heard from the villagers that there was an altercation took place between the informant and the accused over some matter relating to fishery.
- 15. P.W.6, Toribullah Ali has stated that he knows both the parties but he did not know anything about the incident. He only heard that there was an altercation place between the accused and the informant.
- 16. I have heard the arguments of both the sides. Perused the evidences on record.
- 17. In this case , charge was framed u/s 8 of POCSO Act . Now , question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence . Now, **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.

- 18. Now, in this instant case, there is no allegation by the victim girl of any sexual assault upon her by the accused person. This victim (P.W.2) made it clear in her evidence that the accused did not commit any sexual assault on her on the date of occurrence. She disclosed that her father (P.W.1) gave the ejahar against the accused person out of some misunderstanding and without making any enquiries from her. Her evidence reveals that the accused only hugged her. Other P.Ws also supported the evidence of P.W.2 and confirmed that no such incident as alleged in the ejahar had taken place. P.W.5 revealed that he heard that there was some altercation between the informant (P.W.1) and the accused person over some matter relating to fishery. So, the offence U/S- 8 of the POCSO Act is not at all attracted in this instant case.
- 19. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Nur Mahammad Ali. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S- 8 of the POCSO Act, and set at liberty forthwith.
- 20. His bail bond stands cancelled.
- 21. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 26th day of November, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Md. Rustom Ali

P.W.2, prosecutrix

P.W.3, Sofjan Begum

P.W.4, Asmina Begum

P.W.5, Tayab Ali

P.W.6, Toribullah Ali

Prosecution Exhibit

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

Special Judge, Kamrup, Amingaon