IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BAJALI, PATHSALA

Spl. POCSO Case No. 04 of 2019

U/S - Sec. 8 of POCSO Act, 2012.

State

- Versus -

Parama Roy

: Accused person.

Present: Sri L.K. Saikia, AJS. Additional Sessions Judge, Bajali, Pathsala.

Appearance & particulars :-

For the State : Smti. Dhira Devi Ld. Addl. P. P.

For the accused persons :Sri Nabajit Sarma. Ld. Advocate.

Dates of recording evidences : 20-05-2019 &02-06-2019.

Date of recording statements u/s 313 Cr.P.C. : 10-06-2019.

Date of Argument : 10-06-2019.

Date of Judgment : 15-06-2019.

J U D G M E N T

1. The prosecution case in brief, is that, one Anup Roy lodged an ejahar on 27-03-2019 with the In-Charge, Sarupeta Police Out Post alleging, *inter-alia*, that on 27-03-2019 at about 1.30 pm his niece aged about 15 years was watching TV in the house of Bipin Roy then accused taking the advantage of absence of any person in the house gagged her mouth, touched her body and disrobed her cloth and tried to commit bad act. As and when the victim made hue and cry the

accused fled away from there and thereafter the victim went out from the house and narrated about the incident to Jonali Roy. Hence, this case.

- 2. On receipt of the ejahar, Sarupeta OP registered a GD Entry No. 660 dated 27-03-2019 and forwarded the same to Patacharkuchi Police Station to register a case under proper section of law and accordingly it was registered as Patacharkuchi P. S. Case No. 238/19 u/s 8 of POCSO Act, 2012.
- During investigation police visited the place of occurrence, recorded the statements of witnesses including the victim girl, sent her for medical examination, produced her before the Court wherein the Ld. Magistrate recorded her u/s 164 Cr.P.C, arrested the accused person and forwarded him to the court and after completion of investigation, having been found *prima-facie* case, the I/O sent up the accused for trial by filing charge sheet u/s 8 of POCSO Act, 2012.
- 4. The accused was produced from jail hajot for trial and the copies were furnished to him. After hearing both the parties, framed charge under section 8 of POCSO Act, 2012 and the accusation of charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- The prosecution in order to prove its case examined altogether 3 (three) PWs including victim, informant and I/O. The defence plea is of total denial. The accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations levelled against him by the prosecution witnesses. The defence side has not adduced any defence evidence.
- **6.** Heard argument of learned Addl. P. P. and the learned defence counsel. Perused the record.

7. POINTS FOR DETERMINATION

(i) Whether the accused person on 27-03-2019 at about 1.30 p.m. at village Siyalmari under Patacharkuchi P.S. of district Barpeta, with intent to commit sexual assault touches the breast

of the victim and took off her wearing apparels and thereby committed an offence punishable u/s 8 of POCSO Act, 2012?

Evidence of witnesses

8. PW – 1 Sri Sarat Roy deposed that on the day of occurrence while he was coming to his home at about 3.30 pm then victim informed him that she went to the house of Prabin Roy and while they were watching TV with Nayantara then the accused person came to Prabin's house but left the house immediately since there was no one present except the victim. Hearing the incident from the victim and on instigation by some villagers he had filed this case against the accused person. The villagers who had instigated him had some enmity with the accused person.

In cross-examination, PW 1 stated that he came to know that nothing had happened as stated in the FIR. Moreover, he was not present at the time of the happening of alleged incident. He stated before the police as instigated and instructed by their villagers.

9. PW - 2 victim of this case has deposed that on 27/03/2019 at about 1.30 pm when she was in the house of her uncle Prabin Roy and watching TV with her sister Nayantara, then accused Parama Roy came into the house and in the mean time Nayantara went to take food. Thereafter, Parama Roy came near to her and asked what they were watching in the TV and in turn she replied him accordingly. After that he asked her whether any other persons were there in the house and when she reply no then he went out from the house. Then she went to her house and in the house her 'borma' and mother asked her where she was then she told them that she was in the house of Prabin Roy and watching TV with Nayanatara. But due to misunderstanding of the fact the informant filed this case against accused Parama Roy but she do not know what he had written in the FIR. On the basis of that FIR on the next day police took her for medical examination but she had refused to do medical examination since nothing had happened there with her for doing medical examination. Thereafter, police produced her before the court and in the Court Magistrate has recorded her statement but before the magistrate she stated as instructed by her uncle Sarat Roy.

In cross-examination, PW 2 stated that nothing had happened as stated in the FIR by her uncle Sarat Roy. She has no any grievances against the accused Parama Roy. She further stated that she heard that there was an enmity in between her uncle Sarat Roy and the accused person for that to take a revenge her uncle has filed this case against the accused person.

10. PW - 3 Sri Dilip Kr. Das, I/O of this case has deposed that he conducted the investigation of Patacharkuchi P.S. case No. 238/19 u/s 8 of POCSO Act. 2012 and after completion of the investigation finding the incident being true charge-sheet vide No. 76/19 dated 30/04/2019 u/s 8 of POCSO Act was submitted against the accused person.

In cross-examination, PW 3 stated that under the law, being an ASI of Police, he cannot investigated the case but since there was no sufficient police staff so he was endorsed to investigate into the case but he could not produced the said order by which empowering him to investigate into this case. He stated that he had recorded the statement of the witnesses in the P.S.

Discussions, Decision, and Reasons thereof

- **11.** To arrive at a judicial decision, let me considered what the witnesses have stated. Also perused the case record and gone through the provision of law.
- evidence of the witnesses it comes to light that the instant case has been filed due to misunderstanding of a fact and on instigation of the villagers. PW 2 the victim stated that while she was watching TV in the house of Prabin Roy then accused came and asked her what she was watching and since there was no one present except her, so he immediately left the house and thereafter she also returned from there to her house. But the informant filed this false case with intent to take revenge due to prior enmity taking the advantage of present of her in the house of Prabin Roy. She also specifically stated that as per instruction of Sarat Roy she has stated before the Magistrate. She stated that she has no any grievances against the accused.
- **13.** PW 1 the informant has stated that he was not present at the

time of happening of the incident. He filed the case at the instigation of villagers. PW 1 also stated that later on he came to know that there was no any incident took place and as such he has no any grievances against the accused person.

- 14. From the above evidence of witnesses and considering the facts and circumstances of this case it becomes crystal clear that nothing had happened with the victim as stated in the FIR. Moreover, PW 2 in her evidence specifically stated she has narrated the alleged incident as instructed by informant Sarat Roy, her uncle. As such, she has no any grievances against the accused person.
- **15.** In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as alleged.
- **16.** Accordingly, the accused Parama Roy is acquitted of the offence charged u/s 8 of POCSO Act, 2012 and set him at liberty forthwith.
- **17.** A copy of this judgment and order be given to the the District Magistrate, Barpeta .
- **18.** The Spl. POCSO Case is disposed of accordingly.
- **19.** Judgment is pronounced and delivered in the open Court in presence of both the parties and I put my hand and seal of this Court on this 15th day of June, 2019.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictated & Corrected by me

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictation taken and transcribed by me. (Alakesh Das, Steno)

APPENDIX:-

Oral evidences :-

PW-1 Sri Sarat Roy.

PW-2 Victim

PW-3 Sri Dilip Kr.Das

Documentary evidence:-

Ext.-1. Statement of victim

Ext.-2 Ejahar

Ext. - Sketch map

Ext. 4 - Seizure list.

Ext. 5- Charge-sheet.

Defence evidence.

Nil.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.