IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

Special (POCSO) Case No.06(N)/2018

U/S 6 of the POCSO Act.

State

- Versus -

Atul Saikia

: Accused person.

Present :

Shri P.P. Bairagi, AJS Special Judge, Nagaon.

Appearance & particulars :-

For the State : Mr. M.J. Neog, Ld. Special P.P.

For the accused : Smt. Sahina Khanam, Ld. Advocate.

Charge framed on : 10-05-2018.

Evidence recorded on : 29-10-18, 25-03-19, 12-06-19, 22-08-19 &

05-12-19.

Date of Argument : 29/02/2020 & 06-03-2020

Date of Judgment : 07/03/2020.

J U D G M E N T

- 1. The case of the prosecution in brief is that the informant who is the father of the victim of this case filed First Information Report (hereinafter referred to as FIR) before the Officer-in-charge of Kachua Police Station on 30/05/2017 stating inter alia that accused Atul Saikia called the informant's minor daughter 'X' (11/12 years of age) to his (accused person's) house for cooking rice and at around 11 p.m, the accused forcefully committed penetrative sexual assault upon her causing grievous injury on her private parts. The accused also threatened her not to disclose about the occurrence to others.
- 2. On receipt of the said First Information Report, Kachua Police Station Case No.-124/2017 was registered u/s-4 of the POCSO Act. After investigation, Charge Sheet was submitted against accused Atul Saikia u/s-6 of the POCSO Act.
- 3. On appearance of accused Atul Saikia before this court, copy was furnished to him and he was charged u/s-6 of the POCSO Act by the learned Special Judge, Nagaon (Sessions Judge, Nagaon). The accused person pleaded not guilty when the charge was read over and explained to him.
- 4. During the trial, the prosecution has examined 5(five) witnesses including the informant and the victim of the case and closed the evidence. Accused was examined U/S 313 CrPC and he declined to adduce evidence.
- 5. I have heard learned counsels for both sides and perused the record.

6. Now the point for determination is as follows:-

Whether in the month of May, 2017, the accused committed aggravated penetrative sexual assault with victim 'X' as alleged ?

7. **Decisions and reasons for decision:**

Now let me appreciate the evidence on record.

Prosecution Witness-1(hereinafter referred to as PW), is the father of the victim and informant of the case. He deposed that on the day of incident he went to another village for the purpose of work then he got an information over phone that his daughter i.e. victim had been suffering from stomach pain, he went back to his home and he saw 4/5 co-villagers. His daughter was keeping mum. On being asked by the wife of this witness the victim has reported that she suffered from stomach pain and sustained injuries on her urinal track. This witness further revealed that prior to 10 days of his getting information, his daughter went to this witness sister's house for the purpose of cooking, as such he suspected his brother in-law Atul Saikia who might commit the incident. Therefore, this witness filed FIR which is marked as Ext.1 Ext.1(1) is his signature. During the investigation medical examination of his daughter was done through police and the statement of the victim was also recorded by Magistrate.

During his cross-examination he deposed that his daughter did not inform him about the incident from the date of her service with her aunty's house till filing of the ejahar. Earlier also his daughter went to the house of the accused and helped them in their house. He had suspicion over the accused and due to the pressure of the villagers he filed the FIR.

8. PW-2 is the victim 'X' (name withheld) to the case deposed that informant is her father and accused is her uncle (peha). She

deposed that one morning during her urinating she fell discomfort and her mother asked about it. Her mother questioned her as to whether something was happened while she was working in the house of accused. Out of fear she replied to her mother that accused committed bad things with her. When the matter was come to knowledge of her father then he filed FIR against the accused. During investigation her medical examination was done. She also gave her statement U/s 164 CrPC. Ext.2 is the statement U/s 164 CrPC. Ext.2(1), 2(3) are her signatures.

During her cross-examination she deposed that she had not reported anything to anyone. Out of fear she gave statement in the court. She further deposed that accused was not involved in committing any bad things with her.

9. PW-3 deposed that the incident took place about 2 years ago. Some people were gathered in the house of the informant and this witness also went to that place. She got the information that accused committed bad things with the victim few days ago.

During cross-examination she deposed that accused is the uncle of the victim and she has no idea if the case is filed out of suspicion.

10. PW-4 is the mother of the victim deposed that the incident occurred in the year 2017 in the month of May. She noticed that her daughter was feeling discomfort during urinating. Prior to that her daughter went to the house of accused 10 days ago and this witness suspected that accused had committed some bad things with her daughter, so matter was informed to her husband who filed the case.

During her cross-examination she deposed that she came to know that accused was not involved in any bad activities with her daughter.

11. PW-5 is th Medical Officer who examined the victim on 31-05-17 in connection with this case. And upon examination of the

victim the doctor is of opinion that there is recent evidence of sexual assault (raped), there is recent injury to her private parts (hymen absent), age 15-16 years according to radiologist.

- 12. From the evidence of the PWs more particularly from the evidence of the victim, it can be said that she has not implicated the accused about commission of aggravated penetrative sexual assault upon her. She has only deposed that out of fear she reported that accused committed bad things with her. The word bad things cannot be termed as rape or aggravated penetrative sexual assault. From the evidence of PW-1 it can be said that out of suspicion and out of public pressure he filed the FIR against the accused person. From the evidence of PW-1 it can be said that he has nowhere deposed that victim has reported him about the aggravated penetrative sexual assault caused by accused. The victim has also nowhere deposed that she reported the matter to her father. From the evidence of PW-3, it can be said that she has also nowhere deposed that accused had committed sexual assault upon the victim and the matter was reported to her by the victim herself. From her evidence it can be said that she has nowhere mentioned about the source of information from whom she could know about the involvement of the accused with the alleged offence. From the evidence of PW-4, it can be said that she also out of suspicion at first implicated the accused with the alleged offence, but during her cross-examination she clear the fact that accused was not involved with the alleged offence.
- 13. Though the doctor has given evidence to the effect that he found injuries upon the private parts of the victim (raped) but his opinion cannot be the sole basis for convicting an accused, if evidence of the victim, other independent witnesses are remained silent regarding the involvement of the accused with the alleged offence. That apart the Medical Officer has nowhere maintained the history of the case. Having considered the insufficient materials on record, I am of the view that it is not a fit case to convict the accused person.

Though the Learned predecessor in office has dispensed with the examination of accused U/s 313 CrPC, but I have recorded the statement of the accused U/S 313 CrPC and plea taken by accused is of denial. By way of cross-examination accused has rebutted the presumption about his involvement with the offence. Having considered all, I find it proper to acquit the accused person from the alleged charge as prosecution has failed to prove the same beyond all reasonable doubt. Accordingly, accused is acquitted and set at liberty, and bail bond of the accused will be automatically cancelled after the expiry of 6 months if no appeal/revision is preferred.

Given under my hand and seal of this court on this the 7th day of March/2020, at Nagaon.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

APPENDIX

Oral evidence :-

PW-1 Father of the victim

PW-2 Victim (name withheld).

PW-3 Mamoni Hazarika

PW-4 Mother of the victim

PW-5 Medical officer.

Documentary evidence :-

Ext.-1 F.I.R.

Ext.-2 Statement of victim U/S 164 CrPC

Ext.3 Medical report

Defence side did not adduce any evidence.

Special Judge, Nagaon.