IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 22/2018

State of Assam -Vs-

1. Shanti Thapa.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.
For the Accused: Mr. Dwijen Kr. Boro, Learned Advocate.

Date of Evidence : 17-11-18.

Date of Argument : 19-11-18.

Date of Judgment : 20-11-18.

JUDGMENT

- 1. The prosecution case in brief is that on 30-10-16, informant Smt. Swarba Maya Mizar lodged an FIR with the Officer-in-Charge of Udalguri P.S. alleging that on 29-10-16, at about 4 pm the accused had committed rape on her minor daughter(victim-A).
- On the basis of the FIR, Udalguri PS Case No. 240/16, under Section 6 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 6 of POCSO Act against the accused person Shanti Thapa.

- 3. The learned Sessions Judge vide Order dated 20-07-2018, transferred the case to this court for disposal.
- 4. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 6 of POCSO Act, charge was framed there under and the ingredient of charge under Section 6 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution in order to prove its case examined the informant Smt. Sarba Maya Mizar as PW1 and the victim girl was examined as CW1.
- The statement of the accused person had been recorded U/S 313 Cr.P.C.
 The defence plea was of total denial. Defence had declined to defence evidence.
- 7. Situated thus, the point for determination in the instant case are set up as follows:-
 - (I) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A who is a minor girl aged about 05 years, and thereby committed an offence punishable under Section 6 of POCSO Act?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsel Mr. Dwijen Kr. Boro. Learned defence counsel has argued that the ingredient of Section 6 of POCSO Act has not been established in the present case against the accused person.
- 9. I have gone through the evidences on record. The prosecution to prove its case examined 1(one) witness. In her evidence, PW1 is Smt Sarba Maya

Mizar, the informant and mother of the victim girl, had deposed that on the date of occurrence, her daughter was down with fever. Then, she asked the accused to visit her daughter at home for her treatment. The accused had a pharmacy in village Bandarguri. Previously also the accused used to give medical treatment to her daughter. At about 11 am in the morning, she went to market leaving her daughter Sapna @ Sampa Mizar at home along with her elder brother who was aged about 8-9 years at that time. In the afternoon at about 4 pm, when she returned back from the market and saw her daughter Sapna sleeping on the bed. Thereafter, the children of their locality informed her that in the morning when the accused visited her home, Sapna cried a lot. The villagers also informed her that in the morning they had heard "halla" in her house and also heard crying of her daughter. When she asked Sapna what happened in the morning, she informed that the accused gave her injection, and therefore, she cried out of fear. But as the villagers started making various comments, therefore, due to misunderstanding PW1 lodged the FIR against the accused. Later on, the FIR was written on it. In cross-examination PW1 had revealed that she did not know the contents of the FIR. Due to misunderstanding she lodged the FIR.

- 10. CW1 is the victim girl, who is aged about 7 years. Before recording the evidence, the victim was examined by this Court and on examination it appeared that the witness had attained the maturity of understanding and her evidence could be recorded. In her evidence the victim had deposed that when she was studying in class 1, one day accused Santi Thapa came to her house during day time and gave her an injection. At that time her mother was absent in her house. When the accused gave her injection, out of fear she cried a lot. She had further deposed that no other incident happened. Cross-examination of CW1 was declined by the defence.
- 11. On appraisement of the evidences on record it found that both the informant, the mother of the victim and victim girl herself, did not support

the prosecution case. They had adduced evidence disclosing a different story inconsistent with the contents of the FIR. PW1, the mother of the victim girl and informant of this case categorically stated in her evidence that as the villagers started making various comments, therefore, due to misunderstanding she lodged the FIR against the accused. She even expressed her ignorance about the contents in the FIR. CW1 the victim girl has also corroborated the evidence of her mother and deposed that on the date of occurrence the accused came to her house during day time and gave her an injection and then out of fear she cried out a lot. She has also made it clear that on the date of occurrence no other incident happened. PW1, the mother of the victim girl has also in her evidence revealed that on the date of occurrence as the victim girl was down with fever, therefore, she called the accused, who had a pharmacy in village Bandarguri for treatment of the victim. Thus, on assessment of the evidence of the victim and the victim girl who are the material witnesses of the case, it appears that there is no incriminating evidence available on record against the accused person.

- 12. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 6 of POCSO Act against the accused person.
- 13. Situated thus the point for determination are decided in the negative and against the prosecution.

ORDER

14. In the result, the accused person Shanti Thapa is found not guilty under Section 6 of POCSO Act and acquitted of charge under Section 6 of POCSO Act and set with liberty forthwith.

15. Judgment signed, delivered and pronounced in the open court today the 20^{th} of November, 2018.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI. Special (POCSO) 22/2018 APPENDIX

(A) Prosecution Exhibits : Nil.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses: PW1- Smt. Sarba Maya Mizar.

(G) Defence witnesses : Nil.

(H) Court witnesses : CW1- Victim- A.

(N.Talukdar) Addl. Sessions Judge. Udalguri.