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

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

Special (POCSO) 03/2019 U/S 457/354-C/506 IPC R/W Section 8 of POCSO Act

State of Assam

-Vs-

Sajal Das.....Accused.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. T.C. Boro, Learned Advocate.

Date of Evidence : 18-11-19: 28-11-19.

Date of Argument : 30-11-2019.

Date of Judgment : 06-12-2019.

JUDGMENT

1. The prosecution case in brief is that on 17-07-18, in the night, at about 12 O Clock, the accused Sajal Das entered into the house of informant Goya Das by digging a hole and attempted to commit rape upon his tweleve years old daughter but somehow she managed to escape from the clutches of the accused. The accused also made video of the entire incident and threatened to upload the same in the internet if she divulged about the incident to other people. At the time of incident the informant was out of his home in connection with job. On 03-08-18, the victim informed him about the incident then on 04-08-18, he lodged the FIR with the Officer-in-Charge of Tangla P.S.

- On the basis of the FIR, Tangla PS Case No. 124/18, under Section 457 IPC R/W Section 8 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 457/354/506 IPC R/W Section 8 of POCSO Act against the accused Sajal Das.
- 3. 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 457/354-C/506 IPC, R/W Section 8 of POCSO Act, Hon'ble Special Judge, Udalguri framed charge there under and the ingredients of charges under Section 457/354-C/506 IPC, R/W Section 8 of POCSO Act, were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. The learned Special Judge vide Order dated 12-03-19, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 03(three) witnesses:

PW1- Goya Das.

PW2- Binu Swargiary.

PW3- Victim-A.

- 5. 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 adduce defence evidence.
- 6. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused committed lurking house trespass by night by entering into the dwelling house of Goya Das in order to committing an offence of rape?

- (II) Whether the accused captured the image of victim-A engaging herself in a private act in circumstances she had expected of being not observed either by him or by any other person at your behest?
- (III) Whether the accused committed criminal intimidation by threatening victim-A with threat to release her video on net?
- (IV) Whether the accused committed sexual assault upon Victim-A, aged about 12 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T.C. Boro.
- 8. Learned defence counsel has submitted that the victim has not adduced any evidence implicating the accused she has not supported the prosecution story as emanated from the FIR. Hence, the prosecution has filed to prove the charge against the accused.
- 9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is Goya Das, informant and father of the victim girl. In his evidence PW1 had deposed that about one year ago, the occurrence took place. At the time of incident, he was in Tamulpur. His victim daughter was living alone at home. After two days of the incident, when he returned home from Tamulpur, his daughter victim-A told him that two days back, in the night at 12 O' clock, the accused entered into his 'katcha' house by digging a hole in the backside of house and touched his daughter while she was sleeping. While she was sleeping, the accused took videographs of her by his mobile phone. When the accused touched her, his daughter woke up and inflicted a blow to the accused. Then the accused out of fear went out of his house through the hole

dug by him. At the time of incident, his daughter was 12 years old. At the time of incident, his neighbour Ratiram Kachari's 7-8 years old daughter namely Tarulata was sleeping with his daughter. On hearing about the incident, he lodged written FIR. Ext-1 is the FIR. Ext-1(1) is the signature of PW1. In connection with this case, the Police got his daughter's statement recorded by learned Magistrate U/S 164 Cr.P.C. The Police had seized the original birth certificate of his daughter. Ext-2 is the seizure list. Ext-2(1) is the signature of PW1. M.Ext-1 is the seized original birth certificate where in the date of birth of his daughter had been recorded as 29-03-2006. In crossexamination, PW1 had stated that he had compromised with the accused. His relation with the accused is now cordial. He was not present at the time of incident. He did not know what actually had happened. After two days of the incident, he lodged the FIR. His wife was dead. His family is consisted of his minor daughter only. There were houses of neighbours near his house. PW1 had denied the suggestion that the accused did not enter his house by digging hole nor touched his daughter and that accused did not make videographs of his daughter.

- 11. PW2 is Binu Swargiary, VDP Secretary of Tangla Gaon. In his evidence PW2 had deposed that about 07-08 months ago he went to Tangla P.S. In the P.S. the police took his signature in a paper as witness as he was the Secretary of VDP. He did not know anything else about the incident. He did not ask the informant or the victim about the incident. Cross-examination of PW2 had been declined by the defence.
- 12. PW3 is victim of the case. In her evidence PW3 had deposed that about one year ago, the occurrence took place. On the date of occurrence while she was alone at home, in the night, accused visited her house. Then out of fear she raised hue and cry. Then the accused left her house. Later on, after a few days when her father returned back to home she informed about the incident. Then out of anger her father lodged the FIR. In connection with the incident her statement had been recorded by learned Magistrate under Section 164

Cr.P.C. Ext.-3 is the statement. Ext.-3(1) and 3(2) are the signatures of PW3. After the incident she refused to undergo medical treatment. In cross-examination, PW3 had stated that on the date of occurrence the accused did not misbehave with her. She gave statement before the Magistrate as tutored by her father. Later on, the villagers negotiated their dispute and they arrived at an amicable settlement. Now her relation with the accused is cordial.

13. On appraisement of the evidence on record it is found that the victim girl, has not adduced evidence implicating the accused person in the allege offence of sexual assault. PW2, the victim girl has stated in her cross-examination that the accused did not misbehave with her nor made any attempt to sexually harass her. She gave statement under Section 164 Cr.P.C. given before the Magistrate as tutored by her father(PW1). She had stated that they had amicably settled their dispute. Corroborating the evidence of PW3; PW1, the informant and father of the victim girl had categorically stated in his crossexamination that he had compromised with the accused and his relation with the accused is cordial. He had stated that he did not know what had actually happened on the date of occurrence. Though the father of the victim in his evidence-in-chief deposed against the accused his evidence is not corroborated by the victim. She had revealed in cross-examination that on the date of occurrence the accused did not misbehave with her. Moreover, on the date of occurrence PW1 was absent at his home. Though PW1 had deposed that the accused entered into his house by digging hole but PW3, the victim girl who was present at home in the night deposed nothing that the accused forcibly entered into her house. As per the evidence of PW3 on the date of occurrence, in the night, the accused just visited her house and out of fear she raised hue and cry. According to PW3 her father lodged the FIR out of anger. Thus, from the evidence of material witnesses of the case it appears that no incident of sexual assault upon the victim girl had taken place on the date of occurrence. There is also no evidence that the accused committed lurking house trespass in the night by entering into the dwelling house of the

6

informant and intimidated the victim by threatening her to upload her video

on internet.

14. In view of above discussion it appears that the prosecution has failed to prove

the charges under Section 457/354-C/506 IPC R/W Section 8 of POCSO Act

against the accused beyond all reasonable doubt.

15. Situated thus the points for determination are decided in the negative and

against the prosecution.

<u>ORDER</u>

16. In the result, the accused Sajal Das is found not guilty under Section 457/354-

C/506 IPC R/W Section 8 of POCSO Act and acquitted of charges under

Sections 457/354-C/506 IPC R/W Section 8 of POCSO Act beyond all

reasonable doubt and set at liberty forthwith.

17. Bail bond executed by the accused and the surety shall remain in force for

another six months under the purview of provision under Section 437-A

Cr.P.C.

18. Judgment is signed, delivered and pronounced in the open court today the

06th day of December, 2019.

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) 03/2019 APPENDIX

(A) Prosecution Exhibits :

Ext.-1 : FIR.

Ext.-2 : Seizure list.

Ext.-3 : Statement of the victim U/S 164 Cr.P.C.

(B) Materials Exhibits :

M.Ext.1 : Original birth certificate.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Goya Das.

PW2- Binu Swargiary.

PW3- Victim-A.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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