IN THECOURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

Sessions Case No. 01/2016

(Under Section 12 of POCSO Act)

Present: Md. M. Ahmed,

Sessions Judge

Kamrup(M), Guwahati

State of Assam - Vs -Md. Akbar Ali

.....Accused

Appearance for the Parties:

Advocate for the State : Sri H.K. Deka, Learned Public Prosecutor

Advocate for the accused : J. Islam, learned Advocate

Date of recording evidence : 08.02.2016

Date of Argument : 04.02.2017

Date of Judgment : 15.02.2017

JUDGMENT

1. Prosecution case in brief is that on 24.02.2014 while Sumej Ali husband of informant Firoja Khatun of Hajongbari Sapari under Pragjyotishpur P.S. was not at home ,accused Akbar Ali under enticement took the victim girl /minor daughter of informant to his house and after that, he committed rape upon the victim. This incident occurred on 24.02.2014, however, the informant woke up from her slumber and she on 03.03.2014

lodged an FIR with the then O/C Pragjyotishpur P.S, on the basis of which said PS registered a case under Section 376 of IPC, against the aforenamed accused; investigation was set in motion.

2. During the course of investigation, the I/O visited the place of occurrence, drew up a sketch map of the P.O, examined the victim girl, took her to hospital where she was subjected to medical examination. He also got her statement recorded by the court U/S 164 of Cr.PC. He also rounded up the afore-named accused and produced him before the court wherefrom he was remanded to judicial custody. Thereafter, the I/O collected the medical report and upon conclusion of investigation and having found sufficient incrimination materials, submitted charge-sheet against the afore-named accused for alleged commission of offence punishable U/S 12 of POCSO Act, 2012. At the time of submission of charge-sheet, the accused was cooling his heels behind the bars. At later stage, he was let off on court bail; thereafter, the learned court below committed the case to this court for trial. Accordingly, the accused was produced before this court. At that time he was in jail; copies were furnished to him as per mandate of law; thereafter, my learned predecessor-in-court upon appearance of the accused and having heard learned counsel of both the sides and upon perusal of materials on the record, framed charge U/S 12 of POCSO Act, 2012 and read over the explained the particulars of accusation to the accused to which he pleaded not guilty and claimed to be tried.

Point for determination in this case:

- **3.** In the instant case, it is to be determined if, on 24.02.2014, at about 1.00 PM at Hajongbari Sapari under Pragjyotishpur P.S. the accused committed sexual harassment upon the victim below 18 (eighteen) years of age and thereby, committed an offence punishable U/S 12 of POCSO, Act.
- **4.** In this case the prosecution has examined only two PWs; both the mother and daughter. Thereafter, the accused was examined U/S 313 of Cr.PC . His plea is of total denial and false implication. He further declined to lead evidence in defence.

5. I have heard the argument so advanced by learned counsel of both the sides, considered evidence on record and and come to the following decision.

Decisions and reasons thereof:

- 6. In this case the prosecution has alleged that on the eventful afternoon, while the father of the victim was not at home, the accused under allurement took the victim a little girl, his daughter and took her to his house located nearby and after closing the door of his house, he committed sexual harassment against the victim. The prosecution has examined the victim as PW2. Her evidence was recorded in camera. Now, she is a married woman. At the relevant time, when the incident occurred she was residing in her parental home. She has deposed that at about 2 years ago, from the date of her deposition, on a particular day, the accused came to her house and he caught hold her hands all of a sudden; he got panicky as the accused was not in the habit of holding her hands on earlier occasion when he visited her house. On being so frightened, she cried out aloud; her mother was inside the house at that time; she immediately rushed to the place and felt offended as regards conduct of the accused of his holding her hands while the victim was alone and in rage, she lodged an FIR against the accused. According to her, this case arose out of a misunderstanding. She has no grievance against the accused; she has further stated that the accused did not hold her hand with any evil intention; he simply held her hands and as because that was a sudden act on the part of the accused, she got frightened and shouted at her mother.
- 7. Upon critical analysis of the evidence of the victim, it has transpired that the victim has not supported the contents in the FIR. This FIR was lodged by the mother of the victim namely Firoja Khatun and in this FIR, it was alleged that on the particular day, at around 1.00 PM, the accused came to her house and allured the victim to go to his house situated nearby and after confining the victim there, he committed rape upon her. But the victim while deposing as PW2 has not uttered a single word, if the accused took her to his house and subjected her to sexual assault. The simple version of the

victim is that on a particular day, the accused came to her house and took hold of her hands and the victim got frightened and she cried out in panic. The evidence of PW1, the mother, reveals nothing. She has simply stated that at the relevant time when the occurrence took place the victim was aged about 18/19 years; this witness has not narrated the incident in any details. She simply stated that she lodged the FIR against the accused out of a misunderstanding; now subsequently, she came to learn that the accused did nothing; she has further stated that the police took the victim to a doctor and got her medically examined; this much she has deposed in her evidence. Upon overall analysis of the evidence of PW1 and PW2, it has dawned upon this court that though the prosecution has alleged that the victim was subjected to sexual assault on a particular day inside the house of the accused ,but it has failed to lead cogent and convincing evidence to establish the fact; rather from the available evidence on record in the court, it has simply surfaced that on a particular day, the accused went to the house of the victim and he held her hands and the victim got frightened; she cried out aloud. That being the position, this court is of considered opinion that the prosecution has failed miserably to establish the guilt of the accused for alleged commission of offence punishable U/S 12 of POCSO, Act; in the result, the accused is found not guilty and is acquitted and set at liberty forthwith.

- **8.** The bail bond of the accused stands discharged.
- 9. Signed, sealed and delivered in the open court on this 15^{th} day of February, 2017 at Guwahati.

10.

(M. Ahmed) Sessions Judge, Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed) Sessions Judge,

Kamrup(M), Guwahati

<u>APENDIX</u>

(A) Prosecution Exhibits: Nil

(B) Defence Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1 : Smt. Firoja Khatoon.

PW-2 : Musstt. Farida Khatun.

(F) Defence Witnesses: Nil

(G) Court Witnesses : Nil.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati