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

#### Spl. POCSO Case No. 09 of 2018

U/S - 8 of POCSO Act, 2012.

State

- Versus -

#### Habijur Rahman

: 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 Ranjit Kalita, Ld. Advocate.

Dates of recording evidences: 22-11-2019.

Date of recording statements u/s 313 Cr.P.C. : 26-11-2019.

Date of Argument : 26-11-2019
Date of Judgment : 26-11-2019.

#### JUDGMENT

- 1. The prosecution case in brief, is that, one Jainuddin Ali lodged an ejahar on 25/06/2018 with the I/C Sarupeta Out Post alleging, *inter-alia*, that on 24/06/2018 at about 9 pm one Hafijur Rahman with inauspicious intention by inducing took the daughter of the informant in the backside of his house and assaulted her physically, also various parts of her body. On being searched, his father recovered the victim and apprehended the accused person with the help village people. Hence, this case.
- 2. On receipt of the ejahar, Sarupeta OP registered a GD Entry No. 643 dated 25/06/2018 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. 408/18 u/s 12 of POCSO Act.

- During investigation police visited the place of occurrence, prepared sketch map of the place of occurrence, recorded the statements of witnesses including the victim girl, conducted medical examination of the victim, produced her before the Court wherein the Ld. Magistrate recorded her statement u/s 164 Cr.P.C, and after completion of investigation, having been found *prima-facie* case, the I/O filed charge sheet u/s 12 of Protection of Children From Sexual Offences Act 2012 against the accused person. Thereafter, the accused was arrested and sent before the Trial Court.
- 4. On being summoned the accused person, entered his appearance and copies were furnished to him and after hearing the learned Addl. P. P. appearing for the State and the learned defence counsel and on perusal of materials available in the record that furnished by police u/s 173 Cr.P.C., having been found sufficient grounds for presuming that the accused person has committed the offence, framed the formal charge u/s 8 of Protection of Children From Sexual Offences Act 2012 IPC. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- The prosecution in order to prove its case examined altogether 2 (two) PWs i.e. the informant and the victim and after examinations of these witnesses, the Ld. Addl. PP submits that the vital material witnesses have already been examined and there is no chance of further development of the prosecution story and hence, prays to close the prosecution evidence.
- **6.** Heard the Ld. Addl. PP appearing for the state. Perused the case record and considering the submission put forwarded by the Ld. Addl. PP the evidence of prosecution side is closed.
- 7. 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 leveled against him by the prosecution witnesses. The defence side has not adduced any defence evidence.

**8.** Heard argument of learned Addl. P. P. and the learned defence counsel.

#### 9. POINTS FOR DETERMINATION

(i) Whether the accused person on 24/06/2018 at about 9 pm committed sexual assault on the victim by touching her breast and also tried to commit illegal work with her and thereby committed an offence punishable u/s 8 of Protection of Children From Sexual Offences Act 2012?

#### **EVIDENCE OF THE WITNESSES**

- **10.** To arrive at the judicial decision, let me see what the witnesses have stated.
- **11.** PW 1 Md. Jainuddin Ali deposed that on 24/06/2018 at about 8.30 pm the accused person tried to kidnap his sister and at that time he was not present at the house. He came to know about the incident from the villagers. Thereafter he lodged an FIR against the accused. Ext. 1 is the FIR and Ext. 1(1) is his signature. Police seized the birth certificate of his sister vide Ext. 2.

In cross-examination, PW 1 deposed that after 15 to 20 minutes later of the happening of the incident while the accused was going through the embankment, the villagers on suspect caught hold upon him. He had not seen anything about the incident.

12. PW 2 the victim deposed that one day at about 9 pm while she was going to nearby tube-well at her house for washing utensil then someone called her in the dark and asked her name and father's name and it was noticed by some village people. Seeing them the villagers suspected them and caught hold the accused person. Her brother lodged the FIR as instigated by the villagers. After filing the FIR Police sent her to the FAAMCH, Barpeta for medical examination and after that she was

produced before the Court wherein Ld. Magistrate had recorded her statement vide Ext. 3.

In cross-examination, PW 2 stated that while she was washing utensil at the backside of their house then no one was present there. She stated before the ld. Magistrate as tutored and instigated by her brother against the accused. Nothing had happened as stated before the Ld. Magistrate.

#### **DISCUSSIONS, DECISIONS, AND REASONS THEREOF**

- **13.** Perused the case record and also gone through the provision of law.
- **14.** PW 1 the informant stated that when the incident took place he was not present and he had not seen anything regarding the incident. He came to know about the incident from the villagers and on suspect he lodged the FIR as instigated by the villagers.
- 15. The victim PW 2 in her evidence categorically stated that nothing had happened as stated in the FIR and her brother had lodged the FIR as instigated by the villagers. She stated before the Ld. Magistrate while recording her statement u/s 164 Cr.P.C. as tutored and instigated by her brother. The accused person is no any way involved in the alleged occurrence.
- 16. On precise analysis and scrutiny of evidence on record, it is found that the instant case has been arisen due to suspect of the fact. On the day of incident, nothing had happened as stated by the victim in her evidence and the villagers on suspect caught hold the accused person. The informant had filed the FIR as per instigation of the villagers. The entire case is based upon the fact of misunderstanding.
- As held by the Apex Court cannot go beyond the evidence, Court is to confine only on the evidence on record. So, in the above, case we cannot go beyond the evidence. The evidence available from the record that nothing had happened as projected by the prosecution which was affirmed by the victim.

- **18.** In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as required under the law.
- **19.** Accordingly, the accused Habijur Rahman is acquitted of the offences charged u/s 8 of the Protection of Children From Sexual Offences Act 2012 and set him at liberty forthwith.
- **20.** The bail bond of the accused person is extended for further period of another 6 (six) months u/s 437 (A) Cr.PC.C
- **21.** A copy of this judgment be given to the District Magistrate, Barpeta u/s 365 Cr.P.C.
- **22.** The Spl. POCSO Case is disposed of accordingly.
- **23.** 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 26th day of November, 2019.

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

Dictated & Corrected by me

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

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### **APPENDIX:-**

# **Oral evidences:-**

PW-1 Md. Jainuddin Ali

PW-2 victim.

# **Documentary evidence:-**

Ext. 1 - FIR

Ext. 2 - Seizure list.

Ext. 3 - Statement.

# **Defence** evidence.

NIL

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