IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl. (POCSO) Case No. 35/2018

u/s 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Ramesh Baurah

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.



For the prosecution: Smti J. Kalita, learned Addl. P.P.

For the defence

: Mr. P. Borah, learned Legal Aid Counsel

Date of recording Evidence: 14.12.2018, 25.01.2019, 08.01.2019, 14.06.2019.

Date of Argument

: 07.08.2019.

Date of Judgment

: 07.08.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 24.07.2018 the informant Sri Nidan Chandra Roy lodged an FIR with the OC, Behali PS stating inter alia that on the same day, when his mentally ill 5 year-old-daughter (name is withheld) was sitting over a culvert at Baralimara Erabari, the accused, Ramesh Baruah enticed her and took her to a place near a Kali Mandir. He alleged that one Dipali Mandal had witnessed that the accused there had sexually harassed his daughter and after she reported the matter, many persons of that locality too witnessed the occurrence. Later, he arrived the place of occurrence and recovered his daughter and caught hold of the accused.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused u/s 8 of the POCSO Act, 2012.
- 3. The accused was produced from custody before this Court in due course, who was furnished with the copies of the relevant documents. As the accused expressed his inability to engage a counsel of his choice to defend him, Sri P Borah, learned legal aid counsel was appointed to defend the accused at the expense of the state. After hearing both the sides

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on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed an offence u/s 8 of the POCSO Act, 2012, the charge was accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.

4. During trial, the prosecution examined six witnesses in all including the Medical Officer as PW 5 and the Investigating Officer as PW 6. The accused was thereafter examined u/s 313 CrPC. His plea was of total denial. He refused to any evidence on his behalf. The case was thereafter, argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed sexual assault on the said victim, who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant Sri Nidan Roy. He stated that his 7 year-old-daughter was playing at the Kali Mandir situated in Barali Gaon on that day. According to him, at about 2.30-3.00 PM, the accused called her to a place near Kali Mandir and committed rape on her. He was reported by Dipali Mandal (PW2) and Mono Rajak after witnessing the said occurrence. Arriving at the place of occurrence he found both the victim and the accused naked. The public caught hold of the accused and informed the police. His daughter was medically examined. He proved his 'Ejahar' as Ext. 1. He further stated that the victim is not mentally sound. In his cross, he stated that he did not witness of any bad work committed by the accused on the victim. He had seen his daughter and the accused together.
- 6. As we turn to the evidence of PW 5, the Medical Officer, Dr. Eliza Deka, who examined the victim on 25.07.2018, we find that she upon examination of the victim found no mark of any injury on her body or on her private parts. She stated that if there would have been any injury on the victim, she could have detected the same by her naked eyes. She found the hymen of the victim present. She did not find any blood clot or any stain either on the private parts of the victim or on her garments. She proved her medical examination report as Ext. 2.
- 7. Thus, we noticed that the evidence of PW 5 is in total contradiction with the evidence of PW 1 or the prosecution case as a whole. Though the PW 1 in his evidence stated that the accused had committed rape on the victim, his evidence is not supported by the Medical Evidence. Had there been any sexual assault on the child, PW 5 could have easily detected the same upon examination of the victim.
- 8. PW 2, Dipali Mandal is the person according to PW 1, who had witnessed the occurrence and reported of the same to him. She stated that on the said day of occurrence at about 4.30 PM, she had seen the accused sleeping over the victim by pulling off his clothes. According to her, she saw both the accused and the victim naked. According to her, she

had also noticed injury marks on the private parts of the victim, which however as noticed, is found to be contradicted to PW 5.

- 9. PW 3 Monoranjan Mandal learnt about the incident from PW 2. He however stated in his cross that he did not witness the accused committing any bad work on the victim.
- 10. PW 4 Bikram Rajbongshi stated that after hearing 'hullah', he came to the place of occurrence and found both the accused and the victim at the mandir. He stated that the public had handed over the accused to police. He heard that the accused had taken the victim to the Kali Mandir and had disrobed her.
- 11. PW 6 is the Investigating Officer, Inspector, Pradip Kumar Baruah. He stated in his cross that as he did not find any interpreter during the time of the investigation of case, he could not record the statement of the victim.
- 12. Thus from the evidence of the unofficial witnesses as discussed above, we find that the prosecution case was based mainly on what the PW 2 had reported to PW 1 and others, alleging that she had witnessed the accused making sexual assault on the victim. As noticed above, we find that though, PW 2 in her evidence stated that she could see marks of injury on the private parts of the victim but the same has not been supported by PW 5. The evidence of PW 1 that the accused had committed rape on the victim is also found to be not in cohesion with the prosecution case. Thus I find that the prosecution has failed to prove its case. As such I acquit the accused person from the offences charged against him and set him liberty forthwith. The jail authority be informed to immediately release him, if he is not required in any other case. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 7th day of August, 2019.

(D. BORA)

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

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ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Nidan Chandra Roy

PW2- Smti Dipali Mandal

PW3- Sri Manoranjan Mandal

PW4- Sri Bikram Rajbangshi

PW5- Dr. Eliza Deka (M.O.)

PW6-Inspector Pradip Kumar Baruah (I.O.)



Exhibits proved by the prosecution witnesses:

Ext.1- FIR

Ext.2- Medical Examination Report of the Victim

Ext.3- Sketch Map

Ext.4- Charge sheet

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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