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

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

Special (POCSO) 35/2017 U/S 08 of POCSO Act

State of Assam

-Vs-

Jamin Daimari.....Accused.

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

For the Accused : Mr. M. Deka, Learned Advocate.

Date of Evidence : 09-09-19: 01-10-19: 05-11-19.

Date of Argument : 07-11-2019.

Date of Judgment : 14-11-2019.

JUDGMENT

1. The prosecution case in brief is that on 19-04-17, informant Miru Hembram lodged an FIR with the In-charge of Bhairabkunda Outpost alleging that on 18-04-17, at about 01 pm while informant's thirteen years old daughter was working in their tea stall situated at Sapangaon Chowk, the accused sexually assaulted her by touching various private parts. The In-charge of Bhairabkunda Outpost forwarded the FIR to Officer-in-Charge Udalguri P.S. for registering case. Accordingly O/C Udalguri registered PS Case No. 78/17, under Section 8 of POCSO Act and after completion of investigation Police submitted charge-sheet under Section 8 of POCSO Act against the accused person Jamin Daimari.

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2. Thereafter, the learned Special Judge vide Order dated 18-07-18, transferred

the case to this court for disposal.

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 8 of POCSO

Act, charge was framed thereunder and the ingredients of charge under

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.

4. The prosecution in order to prove its case examined the following 06(six)

witnesses:

PW1- Miru Hembram.

PW2- Victim-A.

PW3- Dr. Bhagirath Dey.

PW4- Andrias Hembram.

PW5- Robert Murmu.

PW6- SI Umesh Bordoloi.

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 point for determination in the instant case is set up as

follows:-

(I) Whether the accused committed sexual assault upon Victim-A who is

a minor girl 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. M. Deka.
- 8. Learned Addl. P.P. has submitted that the prosecution has adduced cogent, reliable and consistent evidence to bring home the charges leveled against the accused. The accused had committed sexual assault upon the minor girl and he is liable to be punished under Section 8 of POCSO Act.
- 9. Per contra learned defence counsel has argued that no ingredients of offence under Section 8 of POCSO Act had been established in the present case.
- 10. 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.
- 11. PW1 is Miru Hembram, mother of the victim girl. In her evidence PW1 had deposed that about two years ago, the occurrence took place. PW1 had a tea stall at Sapangaon "Chowk". On the date of occurrence, at about 12 pm, she went to a shop in the market, keeping her daughter in the tea stall. After returning to her tea stall, she came to know from the people that while her daughter was in the tea stall, the accused had come there and pushed her. Then, next day lodged the FIR. The Police took her daughter to the hospital for medical examination. She was also produced before the learned Magistrate who recorded her statement U/S 164 Cr.P.C. At the time of incident, her daughter was aged about 13 years. PW1 put thumb impression in her FIR. In cross-examination, PW1 had stated that he had not seen the accused pushing her daughter. PW1 did not know the contents of the FIR. PW1 is an illiterate person.
- 12. PW2 is victim-A. In her evidence PW2 had deposed that on 18-04-2017, the occurrence took place. At the time of incident, she was in the tea stall of her mother. At that time the accused came to their shop. The accused was under

the influence of intoxication. He was yelling and making commotion. Then PW2 scolded him and asked him to leave the shop. Then the people gathered in their shop. Later on, as advised by the people, her mother lodged the FIR. The Police produced PW2 before the Magistrate for recording her statement U/S 164 Cr.P.C. Ext-1 is the statement. Ext-1(1) is the signature of PW2. She was also examined by the doctor on being produced by the police. In cross-examination, PW2 had stated that she gave statement before the Magistrate as tutored by the people who were present in their shop at the time of occurrence.

- 13. PW3 is Sudhir Dey. In his evidence PW3 had deposed that on 19-04-2017, he was posted as M& HO 1 at Udalguri Civil Hospital. On that day at 4.05 pm, he examined the victim girl and on examination of the victim he found no injury on his person. Ext-2 is the report and Ext-2(1) is the signature of PW3. Cross-examination of PW3 had been declined by the defence.
- 14. PW4 is Andrias Hembram. In his evidence PW4 had deposed that on the date of occurrence, at about 1 pm, he was in his shop situated at Sapangaon Chowk. At that time he had seen gathering of people near the tea stall of informant. Then he went there and heard from the people that while the victim was alone in the tea stall, the accused caught hold of her hand. Then the people detained the accused. Thereafter he left that place and went to his shop. In cross-examination, PW4 had stated that he had not seen the incident.
- 15. PW5 is Robert Murmu. In his evidence PW5 had deposed that on the date of occurrence, at about 1.30 pm, after returning from the school, at Sapangaon shop, he heard from the people that the accused had molested the victim. In cross-examination, PW5 had stated that he had not seen the incident.
- 16. PW6 is SI Umesh Bordoloi, Investigating Officer of this case. In his evidence PW6 had deposed that on 05-09-2017, he was working as In-charge of

Bhairabkunda OP under Udalguri PS. On that day, O/c Udalguri PS Swapan Kr. Seal handed over the case diary of Udalguri PS case No. 78/17 U/S 8 of Pocso act to PW6 for further investigation of the case. In course of investigation, he had recorded statement of two witnesses U/S 161 Cr.P.C. On completion of investigation, having found sufficient materials against the accused Jamin Daimari U/S 8 of POCSO Act, PW1 submitted charge-sheet against him under said section. The previous investigating Officer of the case SI Dimpal Goyari, I/c Bhairabkunda OP recorded GDE No. 370 dated 19-04-2017 in connection with the incident. The informant put thumb impression in the FIR. Ext-3 is the FIR. Ext-3(1) is the signature of O/c Swapan Kr. Seal under the registration note. PW1 was acquainted with his signature. Ext-4 is the charge-sheet. Ext-4(1) is the signature of PW6. The sketch map of place of occurrence was prepared by previous Investigating officer SI Dimpal Goyari. Ext-5 is the sketch map. Ext-5(1) is the signature of SI Dimpal Goyari. PW1 was acquainted with his signature. In cross-examination, PW6 had stated that the occurrence took place 18-04-2017 at 1 pm. The FIR was lodged on 19-04-2017. The name of scribe of the FIR was not available in the FIR.

17. On careful scrutiny of evidence on record it is found that none of the material and vital prosecution witnesses has deposed that on the date of occurrence the accused sexually assaulted the victim girl. According to PW2, the victim of the instant case, on the date of occurrence the accused visited the tea stall of her mother under the influence of intoxication and while he was yelling and making commotion she asked her to leave the shop. At that time people gathered in her tea stall and as advised by the people her mother lodged the FIR. Thus the evidence of victim girl totally negates the prosecution story of sexual assault upon her by the accused. PW1, the informant of the instant case also had not deposed that the accused sexually assaulted her daughter. She had not seen the incident. According to her she was told by the people that the accused pushed her daughter in her tea stall. PW4 and PW5 had also not seen the incident. Though PW4 and PW5 had

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deposed that they had heard from the people that accused caught hold of

the victim hands and had molested the victim but their evidence is not

corroborated by PW2, the victim girl. Thus prosecution has miserably failed

to adduce cogent, reliable and consistent evidence to bring home the charge

under Section 8 of POCSO Act against the accused.

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

prove the charge under Section 8 of POCSO Act against the accused Jamin

Daimari beyond all reasonable doubt.

19. Situated thus the point for determination is decided in the negative and

against the prosecution.

<u>ORDER</u>

20. In the result, the accused Jamin Daimari is found not guilty under Section 8

of POCSO Act and acquitted of charge under Section 8 of POCSO Act and set

with liberty forthwith.

21. Bail bond executed by the accused Jamin Daimari and the surety shall

remain in force for another six months under the purview of provision under

Section 437-A Cr.P.C.

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

14th day of November, 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) 35/2017 APPENDIX

(A) Prosecution Exhibits:

Ext.-1: Statement of the victim-A U/S 164 Cr.P.C.

Ext.-2: Medical report.

Ext.-3: FIR.

Ext.-4: Charge-sheet.

Ext.-5: Sketch map.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Miru Hembram.

PW2- Victim-A.

PW3- Dr. Bhagirath Dey.

PW4- Andrias Hembram.

PW5- Robert Murmu.

PW6- SI Umesh Bordoloi.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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