IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.10/2018

State of Assam

Versus

Sahiful Ali @ Saiful Rahman Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr S. Pahariya

Evidence recorded on : 04.10.18 and 22.01.2019

Argument heard on : 04.02.2019

Judgment delivered on: 04.02.2019

JUDGEMENT

1. The prosecution story in brief is that on 29.3.2018 the informant Sri Lola Brahma lodged the first information report to the effect that on 29.3.2018 at about 3 P.M. in absence of the family members accused Saiful Ali entered into the house of the informant and tried to commit rape on his minor daughter Sopila Brahma. Hence, the first information report.

- 2. On receipt of the first information report in Gossaigaon Police Station a case has been registered under Gossaigaon P.S. case No.106/2018 under sections 448/376/511 of IPC and the case was endorsed to the S.I. Ayub Ali Sk. for investigation. During investigation the I. O. visited to the place of occurrence and recorded the statement of the witnesses including the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 448/354 (A) of IPC, read with section 8 POCSO Act against the accused Sahiful Ali. Relevant copies accordingly furnished to the accused by this court and the charge under section 448 of IPC, read with section 8 of POCSO Act were framed against the accused finding a prima-facie case. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 03 (three) number of witnesses including the informant and the victim as follows:-

PW 1 Miss Sapila Brahma (victim),

PW 2 Sri Lola Brahma (Informant),

PW 3 Smti Anita Brahma.

4. The defence took the plea of total denial and he has not adduced any evidence in support of his case. Recording the statement of the accused person under section 313 Cr.P.C. was dispensed with as there was no incriminating material against the accused person in the testimonies of PWs.

5. **Points for determination:**

- (1) Whether the accused criminally trespassed into the house of the informant for the purpose to rape his daughter?
- (2) Whether the accused committed the offence of sexual assault to the minor victim ?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, Victim of this case deposed that on the day of the occurrence after returning from the College she had her launch and thereafter she went to the well to wash utensils and at that time the accused came near to the well to wash his hands and when his hands touched her body and out of fear she screamed and ran away from the place of occurrence. After the incident she reported the matter to her father and thereafter her father lodged the first information report. In cross evidence she stated that the accused had no bad intention and his hands touched on her body accidentally. She also stated that accused had not caught hold her nor hugged her.
- 8. PW2, Informant of this case deposed that the victim is his daughter. At the time of incident he was not present in the house and on returning home his daughter reported about the incident. He further stated that when his daughter shouted and then accused fled away from the place of occurrence. Thereafter, consulting with the villagers he lodged the first information report. In his cross evidence he deposed that the accused did not had any bad intention nor he directly caught hold of the hands of his daughter but, accidentally the hands of the accused touched in the body of his daughter.
- 9. PW3, Mother of the victim deposed that on the day of the incident she was not present in the house. She further deposed that when her daughter was washing utensils near the well after coming from her College, accused came and asked her water to wash his hands and the hands of the accused touched in her daughter. In her cross she deposed that when the accused pulling water from the well accidentally hands of the accused touched

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with the hands of her daughter and except that no other incident took place. So, from the discussion of the testimonies of prosecution witnesses it is seen that there is no evidence of any sexual assault nor the victim brought any allegation of attempt by the accused to have sexual relationship with her. It was merely accidentally touched the hands of the accused to the victim. More so they have stated that the accused had no bad intention.

- 10. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Sahiful Ali under section 448 of IPC, R.W. section 8 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.
- 11. The judgment is delivered in the open court and given under my hand and seal of the court on this 04th February/2019 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar