IN THE COURT OF SPECIAL JUDGE, NORTH SALMARA, ABHAYAPURI

Present: Shri P. Bora, A.J.S.

Special Judge

North Salmara, Abhayapuri

Special Case No.(P) 05(MCR)/2017

U/S 4 POCSO Act, 2012

State of Assam Vs Rajab Ali

<u>Appearance</u>

Smti. R.Choudhury	 Special P.P. for the State.
Md. A. Hussain	 Ld. Defence Counsel.
Charge framed on	 05.01.18
Evidence recorded on	 25.04.18, 12.09.18, 10.10.18, 08.05.19.
Argument heard on	 14.06.19
Judgment pronounced on	 15.06.19

<u>JUDGMENT</u>

The Case for the prosecution in brief is that on 05.05.2016, the informant Md. Jahar Ali lodged an FIR before the officer in charge of Mererchar Police Station alleging inter alia that on that day i.e. on 05.05.2016, at about 01:00 PM, the accused person after taking his daughter aged about 2 years 10 months by enticing her to his house entered into sexual intercourse with her. It has also been stated that while the wife of the informant came to the house of the accused in search of her daughter, his daughter told his wife that her garments i.e. panty was torn down and his wife has also seen reddish sign of injury on the genital organ of his daughter. Hence, the case.

- After receiving the said ejahar the officer-in-charge of Mererchar police station registered the same vide Mererchar P.S case No. 54/16. Police started the investigation. After completion of the investigation, the investigating officer submitted charge sheet against the accused person U/S 376(2) (1) IPC R/W Sec. 4 of POCSO Act,2012.
- 3. Accused person appeared before court to face the trial. The copies of all the relevant documents furnished to the accused. After perusing and considering all the relevant documents referred to U/S 173 Cr.P.C as well as after considering the submission of Ld. Special P.P and Ld. Counsel for defence finding a prima facie case a formal charge U/S 4 of the POCSO Act, 2012 has been framed against the accused person and the same on being read over and explained to the accused person to which accused person pleaded not guilty and claimed to be tried.
- To bring home the charge against the accused person in this case the prosecution side has adduced and examined as many as 7 witnesses including the informant and the victim but defence examined none. Accused was examined u/s 313 Cr.P.C and on being so examined accused person declined to adduce defence evidence and narrated that false evidence has been adduced against him.

5.POINTS FOR DECISIONS

Whether the accused person on 05.05.2016 at about 01:00 P.M, have committed penetrative sexual assault upon the victim and thereby committed an offence punishable U/S 4 of the POCSO Act,2012.

6. **DECISION AND REASONS FOR DECISION-**

I have gone carefully through the entire evidence of the record. I have also heard and considered the argument put forwarded by the Ld Speicial PP.Pfor the State as well as Ld. Counsel for defence.

7. In this case the prosecution side has examined the informant Md. Jahar Ali as PW-1 and exhibited the FIR vide Ext. 1 and Ext. 1(1) is the

signature of PW-1. The prosecution side has also examined PW-1 as one of the seizure witness and exhibited the seizure list vide Ext. 2 and Ext. 2(1) is the signature of the PW-1 being the seizure witness of this case. In course of evidence PW-1 stated that the occurrence as alleged has taken place about two years back and it also revealed from the evidence of PW-1 that on the day of the occurrence after coming from paddy field he came to know from his locality that his 2 years 10 months old daughter was rapped by the accused person. Thus, it appears that PW-1 is not an eye witness of the occurrence as alleged, who has also failed to disclose the source of his information about the occurrence as because PW-1 in course of cross examination clearly stated that he did not know the person from whom he has heard about the occurrence. Again although PW-1 stated that the accused person was caught hold by the pubic and handed over to the police but in course of cross examination PW-1 clearly stated that he did not by whom the accused person caught hold. That apart from the evidence of cross examination of PW-1 it also reveals that he himself have not written the FIR and has also failed to disclose the identity of the person who has written the FIR. In course of cross examination PW-1 clearly stated that he did not know what has written in the FIR. Thus, PW-1 who is the informant of this case, expressed his ignorance about the fact as alleged in the FIR. Again PW-1, the informant, who was also examined by the prosecution as one of the seizure witness has not only expressed his ignorance about the fact as alleged in the FIR but at the same time in course of cross examination clearly stated that he did not know what has been written in the seizure list and he only put his signature on the seizure list. Thus, PW-1 the informant not only expressed his ignorance about the fact as alleged in the FIR but also being a seizure witness has also failed to disclose the contents of the seizure list and in my considered view such kind of ignorance on the part of the informant about the fact as alleged in the FIR and being the seizure witness of the seizure list, definitely weaken and reduced the authenticity and credibility of the FIR as well as the seizure list, on

which the whole prosecution case is rested upon and on this point benefit goes to defence.

- 8. The prosecution side has examined Musstt. Samiran Nessa, the mother of the victim as PW-2 who in course of evidence stated that on the day of occurrence in between 12:00 to 01:00 PM, her daughter has gone to the house of the accused person and sometime later on her daughter came and informed her by crying that the accused person has torn down her panty in connection with which she informed her locality and her husband. The prosecution has also examined PW-2 as seizure witness and exhibited her signature vide Ext. 2(2) in Ext. 2, the seizure list. The prosecution side also exhibited the statement of PW-2 u/s 164 CrPC vide Ext. 3 and Ext. 3(1) is the signature of PW-2. In course of evidence PW-2 stated that although her daughter told her that the accused person torn down her panty but PW-2 did not know whether the panty of her daughter was rifted prior to the incident or not. In this case although the prosecution side has exhibited the statement of PW-2 u/s 164 CrPC vide Ext.3 but in course of cross examination PW-2 clearly stated that she has given her statement u/s 164 CrPC as tutored by others. That apart in course of cross examination PW-2 clearly stated that the case has been instituted against the accused person only on suspicion.
- 9. The prosecution side has examined Md. Samad Ali, Md. Ayub Ali Mondal, Md. Abdul Rahhim Badsha and Md. Firdous Ali as PW-3, PW-4, PW-5 and PW-6 respectively. After perusing and considering the evidence of all the above named four witnesses, the evidence of all the above named four witnesses appears to be totally not helpful to the prosecution as because all the above named four witnesses although stated that they have heard that the accused person rapped the victim and daughter of the informant but in course of evidence all the above named four witnesses who appears to be nothing but reported witnesses, have also failed to disclose the source of their information. Again although PW-5 has been examined by the prosecution as one of the seizure witness and exhibited the signature of PW-5 vide Ext. 2(3)

but in course of cross examination PW-5 clearly stated that he did not know from where, what has been seized by the police personnel.

- 10. Now let us discuss and assess the evidentiary value of PW-7, the victim, who in course of evidence clearly stated that the accused person never committed any misdeed or mischief with her.
- 11. The above is the threadbare discussion of the evidence on record.
- 12. After perusing and considering the evidence on record in its entirely and considering the argument put forwarded by the learned counsel for the prosecution as well as defence it appears that in this case the prosecution side has failed to produce any solid and concrete evidence against the accused. In this case, the evidence of P.W.1, who is the informant of this case appears to be not in conformity with the fact as alleged in the FIR. That apart PW-1 who is the informant of this case has also expressed his ignorance about the fact as alleged in the FIR, and such kind of ignorance about the fact as alleged in the FIR, on the part of the informant definitely weaken and reduced the weight and authenticity as well as credibility of the whole prosecution case. Again as per evidence of PW-2 the mother of the victim, the victim who was examined by the prosecution as PW-7 informed PW-2 that the accused person torn down her panty but the said fact as deposed by PW-2 inspire no any corroboration from any other witnesses including the victim herself. Barring PW-2 and PW-7, the victim, all the other witnesses has also failed to disclose the source of their information. That part the prosecution side have failed to extract any corroboration or support to build up and establish its case against the accused person from the evidence of PW-7, the victim who is the star witness of this case. That apart non-examination of Medical Officer, Scientific Officer and Investigating Officer for the reson best known to the prosecutin has also weaken the case of the prosecution. After perusing and considering the evidence on record no inference can be drawn

from the evidence of any single witness that the accused person is in any way involved in commission of the offence as alleged.

- 13. In the ultimate analyses on the light of above discussion it appears that in this case the prosecution side has failed to produce any single iota of evidence against the accused person which is sufficient to fasten the accused with the charge as alleged against him beyond all reasonable doubt. Thus, in this case the prosecution has not only failed to operate the switch of the prosecution case for ignition but could not even identifying and point out the proper switch of the prosecution on the board itself, hence the court have no any alternative but to acquit the accused person from the charge as lavelled against him.
- 14. I therefore acquit the accused person from the charge lavelled against him. I also released the accused person from liability of bail bond and set him at liability.

Given under my hand and seal of this court on this 14 $^{\rm th}$ day of June, 2019.

Dictated and corrected by me

Special Judge North salmara, Abhayapuri Special Judge North salmara, Abhayapuri

<u>APPENDIX</u>

1. Prosecution Exhibits

Exhibit 1 - The FIR.

Exhibit 1(1) - The signature of P.W.1.

Exhibit 2 - The seizure list

Exhibit 2(1)

Exhibit 2(2) The signatures

Exhibit 2(3)

Exhibit 3 - The statement of PW-2 u/s 164

CrPC.

Exhibit 3(1) - The signature of PW.2.

2. Material Exhibit by prosecution

Nil

3. <u>Defence Exhibits</u> NIL

4. <u>Prosecution Witnesses</u> Nil

5. <u>Defence Witnesses</u> NIL

6. <u>Court Witnesses</u> NIL

Special Judge North salmara, Abhayapuri