IN THE COURT OF THE SPECIAL JUDGE (POCSO): KAMRUP(M), AT GUWAHATI

SESSIONS CASE NO.24/2017

(Under Section u/s 354 of IPC R/W Section 8 of the POCSO Act)

Present: S.P. Moitra,

Sessions Judge

Kamrup(M), Guwahati

State of Assam

-Vs —

1. Nipen Rabha

2. Kumar Das

......Accused Persons

Appearance for the Parties:

Advocate for the State : Sri H.K. Deka, Learned Public Prosecutor

Advocate for the accused: Mr. Hanifullah, Mainul Haque Choudhury,

Learned Defence Counsel

Date of recording evidence: 23.03.2017, 05.05.2017, 17.11.2017

Date of Argument : 02.04.2018

Date of Judgment : 17.04.2018

J U D G M E N T

1. Brief facts of the case of the prosecution are that on 02.05.2013, at about 10 pm, the accused persons named above in furtherance of their

common intention came together to the house of the informant Basanti Goroi. Accused Nipen Rabha voluntarily caused hurt to the informant and also held her tightly by gagging her mouth. On the other hand, the other accused Kumar Das committed rape on her minor daughter (name withheld) aged about 12 years.

- 2. On the basis of the said information, Basistha P.S Case No.339/13 was registered u/s 4 of the POCSO Act, 2012 and was taken up for investigation. During investigation of the case, both the victims were medically examined and statements of the victims were recorded u/s 164 of the Cr.PC. After completion of investigation of the case, the I/O submitted charge sheet against accused Kumar Das u/s 8 of the POCSO Act, 2012 and also against accused Nipen Rabha u/s 354 of the IPC.
- 3. The accused persons who were in judicial custody were produced before the Court. On consideration of charge, charge u/s 354 of the IPC R/w Section 8 of the POCSO Act,2012 were framed against both the accused persons. The charges were read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.
- **4.** In course of trial, the prosecution examined, as many as, 7 witnesses on its behalf and also exhibited 5 documents. Defence plea was of complete denial of any guilt. Statement of the accused persons were recorded u/s 313 of the Cr.P.C. Defence adduce no evidence on its behalf.
- **5.** I heard arguments advanced by the Ld. Counsel for the parties.

6. <u>Points for determination</u>

- i. Whether on 25.05.2013, at about 10 pm, at 13th Mile Notun Basti, accused Nipen Rabha assaulted the informant Smt. Basanti Goroi with an intention to outrage her modesty?
- ii. Whether on the same date, time and place, accused Kumar Das committed sexual assault on the minor victim, then aged about 12 years?

Decision and Reasons thereof

7. I have gone carefully through the entire evidence on record and the materials placed before me. PW.1 Basanti Goroi is the informant of the case and her testimony reveals that the occurrence took place in 2013. She testified that the accused persons were known to her and they were the neighbours of the informant. She further stated that accused Nipen Rabha is the son of her maternal uncle. She testified that on the day of occurrence, she went to her work place and remained there with her daughter. She testified further that she was seen talking with the accused persons and then her son-in-law Rupjyoti arrived at the place of occurrence and took the victim to his home. The informant further testified that she saw her daughter at the house and at that time the accused persons were also there. She added further that thereafter her son-in-law took her to the police station to file a case. She added that case was filed against her will. She also testified that she is an illiterate lady and only put her thumb impression on the F.I.R. She admitted that she made the statement before the Magistrate. Again, the witness stated that she does not want to proceed any further with the case against the

accused persons. During cross examination, she stated that she does not know the contents of the F.I.R, nor she knows contents of her statement before the Magistrate.

- 8. PW.2 Marami Goroi is the alleged victim of the occurrence. She contradicted the evidence of her mother regarding the date of occurrence and stated that the occurrence took place in 2009. She further contradicted the testimonies of her mother by stating that on the date of occurrence, her mother was not at home and she was at her work place. She further testified that thereafter her brother-in-law came and chided her. She also stated that thereafter her mother filed a case against them. Her testimony also reveals that police sent her to the hospital for medical examination and also produced her before a Magistrate. She stated specifically that she gave the statement before a Magistrate. Her testimony reveals that she put thumb impression on that document. It is further revealed by the witness that now she is married to another boy and gave birth to one female child. She specifically stated that she does not want to proceed any further with the case. During cross examination, the witness stated that on that day, her brother-in-law chided and took her to his house and forced her mother to file a criminal case. She specifically stated that she does not know what offence the accused persons had committed. She denied the knowledge of the contents of the statement recorded by the Ld. Magistrate.
- **9.** PW.3 Aswini Rabha is the co-villager and he testified that the occurrence took place in 2013 and added that on that particular day, the case was filed against both the accused persons. He stated that he only heard about the occurrence. This witness specifically denied his personal knowledge about the occurrence.

- **10.** PW.4 Anita Ingti and PW.5 Arati Tumung could not state anything about the occurrence and both of them were at their work place. Thus, their evidence also does not help the prosecution.
- 11. PW.6 Satyendra Singh Hajoari was attached to Jorabat Police Outpost on the relevant day i.e. on 07.05.2013 as Incharge. He proved the F.I.R. as Ext.1 and other documents in connection with the present case in hand. However, although the F.I.R speaks in a different tune, PW.1 Basanti Goroi stated in the Court in complete different tune. Nothing was stated by the said witnesses regarding commission of the either offence by the accused persons, for which they were charged. He also proved both the statements of the informant and the victim, recorded u/s 164 of the Cr.P.C.
- **12.** Thus, in the back drop of the oral testimonies of the witnesses, I find that there is not even an iota of evidence of either commission of offence u/s 354 of the IPC or the offence u/s 8 of the POCSO Act, 2012. The informant herself contradicted the facts stated in her F.I.R and gave a new twist to the story in her evidence before the Court. Her narration of the incident before the Magistrate u/s 164 of the Cr.P.C. was also complete different. However, she specifically stated that she is an illiterate lady and she has no idea what was written in her F.I.R, as well as, in her statement recorded u/s 164 of the Cr.P.C. Similarly, the minor victim of the case also denied the knowledge of the contents of her statement recorded u/s 164 of the Cr.P.C. These two vital witnesses did not utter a single sentence against the accused persons blaming them for commission of the alleged offence. Thus, I find that the prosecution has miserably failed to establish the guilt of the accused persons under the aforesaid sections of law.

- 13. In result, accused Nipen Rabha and Kumar Das are held not guilty of offence punishable u/s 354 of IPC R/W Section 8 of the POCSO Act and they are acquitted and set at liberty. Issue release order against accused Nipen Rabha, immediately, if not wanted in any other case. Bail bond furnished on behalf of accused Kumar Das, will remain in force for the next 6 months.
- **14.** Signed, sealed and delivered in the open court on this 17th day of April, 2018 at Guwahati.

(S.P. Moitra)
Special Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)
Special Judge,
Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Ext-1: F.I.R

Ext-2: Printed form of F.I.R

Ext-3: Sketch map

Ext-4: Extract Copy of GDE

Ext-5: Charge sheet

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1: Smt. Basanti Goroi

PW-2: Smt. Marami Goroi

PW-3: Sri Aswini Rabha

PW-4 : Smt. Anita Ingti

PW-5 : Smt. Arati Tumung

PW-6: SI Satyendra Singh Hajoari

PW-7 : Sri Mintu Gorai

(F) Defense Witnesses: Nil

(G) Court Witnesses: Nil.

(S.P. Moitra)

Special Judge, Kamrup(M), Guwahati