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

SESSIONS CASE NO.237/15

(Under Section u/s 6 of the POCSO Act)

Present: S.P. Moitra,

Special Judge

Kamrup(M), Guwahati

State of Assam
-Vs —
Md. Murad Ali

.....Accused Person

Appearance for the Parties:

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

Advocate for the accused : Shajida Khatun, Ld. Defence Counsel

Date of recording evidence: 02.05.2017, 09.06.2017, 13.11.2017

Date of Argument : 13.12.2017

Date of Judgment : 22.12.2017

J U D G M E N T

1. Brief facts of the case of the prosecution, as revealed in course of trial, are that on 25.04.2015, at about 6:30 pm, the accused person named above lured the victim by offering chips and took her to his house and raped her. It is alleged that upon making noise by the victim, the accused person gagged her mouth. It is further alleged that upon searching for the victim, she was found in the room of the accused person.

- 2. On the basis of the said FIR, Fatasil Ambari P.S Case No.248/15 was registered u/s 376(F) of IPC r/w Section 6 of the POCSO Act and was taken up for investigation. During investigation of the case, statement of the victim was recorded both u/s 161 of the Cr.P.C, as well as, u/s 164 of the Cr.P.C. Her medical examination was also done. After completion of the investigation, the accused person named above was charge sheeted u/s 376(F) of IPC r/w Section 6 of the POCSO Act.
- **3.** Cognizance of the offence was taken under the aforesaid section of law. The accused person, who was on bail, entered appearance before this Court and he was allowed to remain on previous bail. The copies of the relevant documents were furnished to the accused in compliance to the provision of Section 207 of the Cr.P.C.
- **4.** On consideration of charge, charge u/s 6 of the POCSO Act was framed against the accused person. Charge was read over and explained to the accused to which he pleaded not guilty and stood to face trial.
- **5.** To bring home the charge, prosecution examined, as many as, 5 witnesses on its behalf and also exhibited 2 documents. The defence plea was of complete denial of any guilt, as appears from the trend of cross-examination, as well as, from the statement of the accused, recorded u/s 313 of the Cr.P.C.
- **6.** I heard the argument advanced by the Learned Counsel for the parties.

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

i. Whether on 25.04.2015, at about 6:30 pm at Dhirenpara, Etabhata under Fatasil Ambari P.S, Guwahati, the accused person named above committed penetrative sexual assault on the minor girl (name withheld) of the informant, aged about 7 years?

Decision and Reasons thereof

- **8.** I have gone carefully through the entire evidence on record and the materials placed before me.
- 9. PW.1 Md. Rafigul Islam who is the father of the victim and informant of this case testified that on 25.04.2015, he was staying in the rented house at Dhirenpara, Itarbhata in the house of one Saiful Islam. He stated that he knew accused Murad Ali. He further testified that on that day, he was not at home and he returned back home at around 7/7:30 pm and then he saw the police team in his house. He added that other neighbours were also there and they informed him that accused Murad Ali had sexually assaulted his minor daughter. He deposed that accused was his next door neighbour and they had good relation. His testimony reveals that he did not believe this allegation at first as the accused was close to him. He did not question his daughter on that day and went to the police station and filed an FIR there. He proved Ext.1 as the FIR and Ext.1(1) as his signature. He also stated that police sent his daughter to the hospital for medical examination and she gave her statement before the learned Magistrate. During cross examination, the witness stated that the FIR was written by someone at the police station and he does not know the writer. He further stated that he does not know the

contents of the said FIR. He also added that he has good relation with the accused at present and has no grievance against the accused. He further stated that he has no objection if the accused is acquitted from this case.

- informant Rafiqul Islam and the victim was also known to him. He further testified that accused Murad Ali was his tenant in the year 2016 and he came to learn that a case was filed against the accused. The witness stated that on that day he was not at home, he was at his shop at Fancy Bazar. His testimony reveals that he returned back at night after closing the shop and then he came to learn that an incident occurred involving the daughter of the informant. He, however, added that he has no knowledge if anything happened on that day. During cross examination too, he reiterated that he has no personal knowledge regarding the actual incident.
- **11.** PW.3 is the alleged victim of this case. She testified that she knew accused Murad Ali. She further testified that she used to reside with her father and mother at Dhirenpara, Itabhata. She stated that on the day of occurrence, accused gave her one packet of chips and after that nothing happened. She also added that after giving her chips, accused took her to his house and from there, she came back home alone. She added that her father scolded her for going to the house of others. During cross examination, she stated that accused did not do any bad act with her in any manner. She stated that police did not record her statement.

- **12.** PW.4 Babu Ali and his wife Saleha Khatun (PW.5) were residing in the house of Mintu Ali as a tenant. Accused Murad Ali and informant Rafigul Islam and the victim also used to reside as tenants in a different compound nearby their house. Their testimonies reveal that the occurrence took place about 2/3 years ago and on that particular day, at about 8 pm, while they were pursuing their works inside the house, someone knocked the door from outside and told them that an incident had taken place and a large number of people had gathered infront of their house. They stated that hearing the same, they came out and saw a large crowd and they were beating accused Murad Ali. PW.4 added that the members of the family of the victim were also beating the accused. Both of them stated that they came to know that accused had committed rape on the victim and thereafter police was informed and the accused person was handed over to police. During cross examination, both the witnesses stated that their room was at the 3rd floor of the building and they did not come downstairs. Both of them stated that they have no personal knowledge about the occurrence.
- 13. In view of the discussions in respect of the evidence on record, I find that virtually there is no evidence against the accused person for committing any sexual assault on the victim girl. Neither, the father of the victim supported the prosecution story, nor the victim supported it. The remaining independent witnesses also could not prove any light on the evidence on record. Thus, on a close scrutiny of the evidence on record, I find that the prosecution has miserably failed to establish any of the ingredients of Section 6 of the POCSO Act, 2012 and accordingly, the accused person is entitled to get the benefit of doubt.

- **14.** In result, accused Md. Murad Ali is held not guilty of offence punishable u/s 6 of the POCSO Act 2012 and accordingly he is acquitted and set at liberty forthwith. Bail bond, furnished on his behalf, will remain in force for the next 6 months.
- **15.** Signed, sealed and delivered in the open court on this 22nd day of December, 2017 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

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1: Md. Rafiqul Islam

PW-2 : Sheikh Azizul Haque @ Mintu Ali

PW-3: Miss Mahima Khatun

PW-4: Babu Ali

PW-5 : Saleha Khatun

(F) Defense Witnesses: Nil

(G) Court Witnesses: Nil.

(S.P. Moitra)

Special Judge, Kamrup(M), Guwahati