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

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

Special (POCSO) 14/2019 U/S 08 of POCSO Act

State of Assam

-Vs-

Ajgar Ali.....Accused.

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

For the Accused : Mr. T.C. Boro, Learned Advocate.

Date of Evidence : 21-09-19: 01-11-19: 08-11-19.

Date of Argument : 13-11-2019.

Date of Judgment : 15-11-2019.

JUDGMENT

1. The prosecution case in brief is that on 09-08-18, informant Fultuli Mali lodged an FIR with the Officer-in-Charge of Dimakuchi P.S. alleging that on the same day, at about 10.30 am, in the shop house of Banarasi Cha which was under construction; she had seen the accused trying to commit rape upon her six years old minor daughter. When she raised hue and cry, the neighbours gathered and detained the accused person. On the basis of the FIR, Dimakuchi PS Case No. 75/18, under Section 8 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 8 of POCSO Act against the accused Ajgar Ali.

- 2. In consideration of the submission of the learned counsel for both the parties and on evaluation of materials on record having found sufficient grounds for presuming that the accused person had committed offence under Section 8 of POCSO Act, Hon'ble Special Judge framed charge 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. Thereafter, the learned Special Judge vide Order dated 01-11-19, transferred the case to this court for disposal.
- 3. The prosecution in order to prove its case examined the following 05(five) witnesses:

PW1- Dr. Amit Rajbangshi.

PW2- Fultuli Mali.

PW3- Victim-A.

PW4- Dilip Mali.

PW5- S.I. Maheswar Sarmah.

- 4. 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.
- 5. 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 06 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

6. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T.C. Boro.

- 7. 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 evidence of sexual assault upon the minor girl and he is liable to be punished under Section 8 of POCSO Act.
- 8. 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.
- 9. 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.
- 10. PW1 is Dr. Amit Rajbangshi. In his evidence PW1 had deposed that on 10-08-2018, he was posted as M&HO-1 at Udalguri Civil hospital. On that day he examined the victim girl, in connection with Dimakuchi PS Case No. 75/2018, U/S 8 of POCSO Act. On examination he found the following:

Physical examination:-

Height- 113 cm, weight- 20 Kg, teeth- 24 Nos., axillary hair- absent, pubic hair- absent, breast- not developed, hymen, vaginal injury- refused sexual examination, marks of violence- no physical injury over exposed area, clothing pink frock.

Vaginal swab examination for spermatozoa:- refused sexual examination.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination: - Approximate age 6-7 years.

Epiphysis not appeared in upper end of ulna and in iliac crest. Epiphyseal union not completed in upper end of radius, lower end of Radius and ulna and lower end of humerus. Six carpal bones appeared. Pisiform bone not appeared.

Urine for pregnancy (BHCG) test shows negative.

Ultrasonography of abdomen reported as mildly enlarged meseatesic lymph nodes and rest of the organs show normal echofeature. PW1 had deposed that in his opinion:

- (1) Urine for pregnancy test negative.
- (2) Vaginal smear not done- as father and child refused sexual examination.
- (3) UCG-W/A mildly enlarged meseatesic lymph nodes and rest of organs shows normal echofeature.
- (4) Radiological age is 6-7 (Six to Seven) years.
- Ext. 1 is the medical report. Ext. 1(1) is the signature of PW1.

Cross-examination of PW1 had been declined by the defence.

- 11. PW2 is Fultuli Mali, mother of the victim girl. In her evidence PW2 had deposed that the occurrence took place in the last year. At the material time one day the accused was doing masonry work near their house. At around 11.30 AM the accused asked her daughter/victim a glass of water for drinking. Her daughter accordingly went to give him a glass of water for drinking on the up stair of the building. When her daughter did not return immediately she suspected something fishy might have taken place in this regard. After few moments her daughter came and told her that the accused out of love and affection took her in his lap. But she suspected otherwise that accused might have outraged the modesty of her daughter and as such she lodged the FIR on mere suspicion though later she came to know from her daughter that the accused did not do anything with her daughter. PW2 put her thumb impression in the FIR. In cross-examination, PW2 had stated that she did not see any incident regarding outraging the modesty of her daughter. On suspicion she lodged the FIR.
- 12. PW3 is the victim girl, who is aged about 7 years. Before recording the evidence, the victim was examined by this Court and on examination it appeared that the witness had attained the maturity of understanding and her evidence could be recorded. In her evidence PW3 had deposed that the occurrence took place in the last year. In the day of occurrence the accused, who was doing work as a mason, asked her for a glass of water for drinking. Accordingly she took a glass of water on the up stair of the

building where the accused was working. After giving the glass of water the accused out of love and affection took her on his lap and thereafter sent her back. The accused did nothing to her. Her mother on suspicion that accused might have outraged the victim modesty lodged an FIR before the police. PW3 told her mother that the accused did not do anything to her. She gave her statement as tutored by police. Ext.2 is the statement recorded U/S 164 Cr.P.C. Ext.2(1) and 2(2) are the signatures of PW3. In cross-examination, PW3 had stated that the accused was on the ground floor when he asked her a glass of water for drinking. She stated before the Magistrate at the time of recording her statement as tutored and dictated by her parents. On that day they were alongwith her in the court.

- 13. PW4 is Dilip Mali, father of the victim girl. In his evidence PW4 had deposed that about one year ago the occurrence took place. At the time of occurrence he was not at home. After returning from his work his wife told him that accused took the victim in his lap after providing a glass of water to him by the victim. PW4's wife suspected that the accused might have outraged the modesty of the victim and therefore lodged the FIR against the accused. Later they came to know that accused did nothing to their daughter. PW4 did not witness the incident. In cross-examination, PW4 had stated that his wife lodged the FIR due to pressure given by the village people against the accused though his wife did not have intention to lodge the FIR before the police.
- 14. PW5 is SI Maheswar Sarmah, Investigating Officer of this case. In his evidence pW5 had deposed that on 09-08-2018, he was working as Officer In-charge of Dimakuchi PS. On that day, at about 12.35 pm, he received telephonic information from Ranjit Deka of Bamunjuli village that a person was caught red handed by the villagers while he was trying to rape a minor girl. Then, PW5 recorded Dimakuchi PS GDE No. 169 dated 09-08-18 and immediately proceed to the place of occurrence. At the place of occurrence, he found the accused who was detained by the villagers. He found injury on

the person of the accused. Then, he sent the accused to Bamunjuli Mini PHC for treatment. He visited the place of occurrence, prepared the sketch map and recorded the statements of the witnesses U/S 161 Cr.P.C. Thereafter, he went to the hospital from where he took the accused to Police station. On the same day, at about 5.30 pm, informant Fultuli Mali lodged FIR in connection with the incident. Next day, he arrested and forwarded the accused to the learned court. He seized victim's wearing apparel as produced by her mother in the PS. The victim was sent for medical examination. On the same day, he also produced the victim before the learned Magistrate to get her statement recorded U/S 164 Cr.P.C. On completion of investigation, having found sufficient materials, he submitted charge-sheet U/S 8 of Pocso act against accused Ajgar Ali. Ext-3 is the extract copy of GD entry. Ext-3(1) is the signature of PW5. Ext-4 is the sketch-map. Ext-4(1) is the signature of PW5. Ext-5 is the FIR where in the informant put her thumb impression. Ext-5(1) is the signature under the registration note of PW5. Ext-6 is the seizure list. Ext-6(1) is the signature of PW5. Ext-7 is the charge-sheet. Ext-7(1) is the signature of PW5. In cross-examination, PW5 had stated that the wearing apparel of the victim was not sent to F.S.L for forensic examination. PW5 had denied the suggestion that he had not investigated the case properly and submitted the charge-sheet without any material.

15. On careful scrutiny of evidence on record it appears that according to PW2, the informant and mother of the victim girl, she lodged the FIR on mere suspicion. Later she came to know from her daughter that the accused did not commit anything with her daughter. PW3, the victim girl had deposed corroborating the evidence of her mother that the accused did nothing bad to her. PW4, the father of the victim girl had also deposed in similar tune with PW2 and PW3. The victim and her parents are the most material and vital witnesses of the case but neither the victim nor her parents have deposed anything against the accused. The medical evidence has also not given any aid to the prosecution case as according to PW1, the Medical

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Officer, sexual examination of the victim was not done as refused by her

and her father.

16. In view of above discussion it appears that the prosecution has miserably

failed to prove any incident of sexual assault upon the victim by the

accused. Accordingly the accused is found not guilty under Section 08 of

POCSO Act beyond all reasonable doubt.

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

against the prosecution.

<u>ORDER</u>

18. In the result, the accused Ajgar Ali is found not guilty under Section 08 of

POCSO Act and acquitted of charge under Section 08 of POCSO Act and set

with liberty forthwith.

19. Bail bond executed by the accused Ajgar Ali and the surety shall remain in

force for another six months under the purview of provision under Section

437-A Cr.P.C.

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

15th 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) 14/2019 APPENDIX

(A) Prosecution Exhibits:

Ext.-1: Medical Report.

Ext.-2: Statement of the victim-A U/S 164 Cr.P.C.

Ext.-3: Extract copy of GD entry.

Ext.-4: Sketch map.

Ext.-5: FIR.

Ext.-6: Seizure list.

Ext.-7: Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Amit Rajbangshi.

PW2- Fultuli Mali.

PW3- Victim-A.

PW4- Dilip Mali.

PW5- S.I. Maheswar Sarmah.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)

Addl. Sessions Judge.

Udalguri.