DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE, SIVASAGAR::

Ref.:- Spl. (P) Case No. 25 of 2014

(Arising out of Nazira P.S.Case No.162/14)

<u>U/S 448/326 IPC, R/W Sec. 8 of POCSO Act.</u>

Present :- Sri S. Khound.

Special Judge, Sivasagar.

The State of Assam : Prosecution

-Vs -

Sri Rajib Robi Das : Accused

APPEARANCE:

For the prosecution/State of Assam : Sri A. K. Bora,

Public Prosecutor,

Sivasagar.

For the accused : Smti Pinkimoni Dutta Gogoi,

Advocate, Sivasagar.

Dates of depositions : 01.08.2015, 01.12.2015, 17.03.2016

Date of argument : 10.05.2016

Date of Judgment : 24.05.2016

JUDGMENT

- 1. The accused Sri Rajib Robi Das, S/O- Late Puna Robi Das, resident of Nazira College Tiniali under Nazira Police Station in the District of Sivasagar, here in this case has been put to face the trial to answer the charge U/S 448/326 IPC, R/W Section 8 of POCSO Act, 2012.
- 2. The fact as disclosed in the First Information Report (in short FIR) is that on 10.10.2014 complainant Sri Kulai Gowalla, son of Sri Ganesh Gowalla of Nazira College Tini-ali, Ward No.2, P.S. Nazira lodged an Ejahar, before the O/C, Nazira Police Station alleging, inter alia, that on 10.08.2014, in the afternoon, at about 2.10 p.m. accused Rajib Robi Das, who is a resident of Ward No.2 near Shiv temple, Nazira town trespassed into the house of the complainant and sexually assaulted the younger sister of the complainant Smti Nomita Gowalla, aged about 12 years at the relevant time. It is further alleged that accused also attempted to commit rape on the victim by gagging her mouth, and when victim raised hue and cry then complainant came to rescue her and

Contd..... ...Page—2

then accused gave a Dao blow on the right arm of the complainant causing grivous hurt and thereafter accused left the scene of occurrence. Hence the complainant lodged Ejahar and prayed for taking necessary action against the accused.

- 3. On receipt of the Ejahar from the complainant police registered Nazira P. S. Case No.162/2014 U/S 448/326 IPC, R/W Section 8 of POCSO Act, and investigated into the case. Accordingly Investigating Officer visited the place of occurrence and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, sent the victim girl to the Civil Hospital for her medical examination and also forwarded the victim to the court for recording her statement U/S 164 Cr.P.C. On completion of investigation submitted Charge-Sheet against the accused U/S 448/326 IPC, R/W Section 8 of POCSO Act.
- 4. The accused Rajib Robi Das produced before this court for trial after furnishing copy to the accused person as the case is exclusively triable by the court of Special Judge.
- 5. On appearance of the accused person before this court, my learned predecessor after hearing both the sides formally framed the charge against the accused U/S 448/326 IPC, read with Section 8 of POCSO Act, 2012. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To bring home the charge, prosecution side has examined only four witnesses including the victim Smti Nomita Gowalla as P.W.2 and Medical Officer Dr. Satyajit Dutta as P.W.4. Defence cross-examined the said P.Ws but adduced no evidence.
- 7. I have heard Mrs. Pinkimoni Dutta Gogoi, learned counsel for the accused and Mr. A. K. Bora, learned Public Prosecutor for the State.

8. THE POINTS FOR DETERMINATION ARE -

(i) Whether the accused on 10.08.2014, at about 2.10 p.m. at Nazira town, ward No.2 under Nazira P.S. in the District of Sivasagar committed house trespass by entering into the dwelling house of the complainant Sri Kulai Gowalla and thereby committed an offence punishable U/S 448, IPC, as alleged?

Contd..... ...Page—3

Page---3

- (ii) Whether the accused on the same day, time and place caused grievous hurt to complainant Kulai Gowalla, and thereby committed an offence punishable U/S 326 of IPC?
- (iii) Whether the accused on the same day, time and place accused committed sexual assault on the victim Smti Nomita Gowalla the younger sister of the complainant Sri Kulai Gowalla, and thereby committed an offence punishable U/S 8 of POCSO Act, 2012 as alleged?

DECISION AND REASONS THEREOF

- 9. To arrive at a judicial decision, let the evidence on record be appreciated.
- 10. P.W.1 is Smti Bina Gowalla who deposed that accused is known to her and victim Nomita Gowalla is her daughter. Occurrence took place about one year back (from the date of her deposition). On the day of occurrence her victim daughter Nomita Gowalla quarreled with the accused but accused did not misbehave with the victim Nomita. P.W.2 further deposed that her husband lodged Ejahar against the accused person and now she is not interested to proceed further with this case. In cross examination P.W.1 deposed that she has no objection if accused is acquitted.
- 11. P.W.2 is the victim Smti Nomita Gowalla who deposed that accused is known to her. Occurrence took place about one year back (from the date of deposition), and on the day of occurrence quarrel took place between the accused and her elder brother Kulai Gowalla and out of anger her brother lodged Ejahar against the accused. P.W.2 further deposed that accused did not misbehave with her. In cross examination P.W.2 deposed that she has no objection if accused is acquitted.
- P.W.3 is the informant Sri Kulai Gowalla who deposed that accused is his neighbour. Occurrence took place about one year back (from the date of deposition), and on the day of occurrence quarrel took place between the accused and P.W.3 and out of anger he lodged Ejahar against the accused alleging that accused committed bad act with his younger sister. P.W.3 further deposed that on the day of occurrence accused did not misbehave with his younger sister Nomita Gowalla. In cross examination P.W.3 deposed that now he is not interested to proceed further with this case and he has also no objection if accused is acquitted.

Contd..... ...Page—4

Page---4

P.W.4 is Dr. Satyajit Dutta who deposed that on 10.08.2014 he was working at Nazira SHC as Medical & Health Officer. On that day, on police requisition, he examined Kulai Gowalla, aged about 16 years, S/O Sri Ganesh Gowalla of College Tini-ali, Ward No.2, Nazira town in connection with Nazira P.S. Case No.162/14 U/S 448/326 IPC and on examination he found as follows:

One cut mark injury observed on the left palm at posterior aspect, measuring 2 Inches length, ½ Inch breadth and ½ Inch deep. P.W.4 opined that nature of injury is grievouss, caused by sharp cutting weapon. Later on patient was referred to Sivasagar Civil Hospital, Joysagar for further treatment. Ext.1 is the medical report and Ext.1(1) is the signature of P.W.4.

- 14. Above are the evidence led by the prosecution in support of its case against the accused.
- 15. To prove the charge U/S 448 of the IPC, the prosecution must prove that :-
 - (i) The accused committed criminal trespass.
 - (ii) Such criminal trespass was committed by entering into or remaining in the dwelling house of complainant Kulai Gowalla.
- 16. It is seen from the evidence on record that P.W.2 Smti Nomita Gowalla, who being the victim of the alleged occurrence failed to corroborate the contents of the Ejaha that at the time of occurrence accused Rajib Robi Das committed criminal trespass into the dwelling house of the complainant Kulai Gowalla (P.W.3). In the FIR P.W.3 alleged that on 10.08.2014, at about 2.10 p.m. accused Rajib Robi Das trespassed into the P.W.3's house and sexually assaulted his younger sister Nomita Gowalla and also attempted to commit rape on her, and when victim raised hue and cry, then P.W.3 came to rescue her then accused gave a Dao blow on the right arm of the complainant Kulai Gowalla causing grivous hurt and thereafter accused left the scene of occurrence. But in their evidence P.W.1, P.W.2 and P.W.3 categorically stated that on the day of occurrenc only a quarrel took place between the accused and the complainant Kulai Gowalla and except this no other occurrence took place on that day. P.W.3 in his examination-in-chief clearly deposed that he lodged Ejahar against the accused out of anger alleging that accused committed misbehave with his yiounger sister Nomita Gowalla. It is seen from the evidence of P.W.2 that on the day of occurrence accused did not misbehave with her. P.W.2 herself not deposed anything against the accused that at the time of occurrence accused committed criminal trespass into her dwelling house and attempted to commit rape on her. It is also seen from the evidence of P.W.1 that on the day of occurrence her victim daughter Nomita Gowalla only quarreled with the accused and accused did not misbehave with her and except this she knows nothing regarding the occurrence.

Page—5

- 17. From the above depositions of P.Ws it is seen that prosecution failed to prove the charge of offence U/S 448, IPC against the accused beyond all reasonable doubts.
- 18. To prove the charge U/S 326, IPC, the prosecution must prove that :-
 - (i) That the accused caused grievous hurt as contemplated in S.320, IPC
 - (ii) That the accused caused it voluntarily as envisaged in Section 322, IPC.
 - (iii) That causing of such grievous hurt was made by means of an instrument for shooting etc. or by means of any instrument which, used as a weapon of offence, is likely to cause death.
- 19. P.W.4 being the Medical Officer in his evidence deposed that during examination he observed one cut mark injury on the left palm of P.W.3 Kulai Gowalla at posterior aspect, measuring 2 Inches length, ½ Inch breadth and ½ Inch deep and the nature of injury is grievous, caused by sharp cutting weapon. Later on patient was referred to Sivasagar Civil Hospital, Joysagar for further treatment. But it transpires from the evidence on record that P.W.3 Kulai Gowalla being the informant/injured deposed nothing regarding the occurrence. From the evidence of P.W.3 it depicts that on the day of occurrence only a quarrel took place in between P.W.3 and the accused and out of anger P.W.3 lodged Ejahar against the accused and accused did not misbehave with his younger sister Nomita Gowalla. Remaining P.Ws including the victim Nomita Gowalla (P.W.2) deposed nothing incriminating the accused with the alleged offence under Section 326 IPC.
- 20. To prove the charge U/S 8 of POCSO Act against the accused Rajib Robi Das, the prosecution is to prove that on the day of occurrence the accused committed sexual assault on the victim Smti Nomita Gowalla who is below 12 years of age. Sexual assault is defined in Section 7 of POCSO Act as follows -
- "Whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

Page—6

- In the present case it is seen from the evidence on record that victim Nomita Gowalla who herself deposed as P.W.2 nowhere stated regarding alleged sexual assault on her by the accused Rajib Robi Das. P.W.2 victim very clearly deposed that at the time of occurrence only quarrel took place between the accused and her elder brother Kulai Gowalla (P.W.3) and except that accused did nothing. The contents of the Ejahar is not at all supported by the victim herself because on the day of occurrence accused did not touch her vagina, anus, chest or made her to touch anus, breast, penis of the accused or anybody else. Accused also did not do anything with sexual intent since he only quarreled with P.W.3 Kulai Gowalla only and that act gives no impression that the accused had any sexual intent in his mind at the time of alleged occurrence.
- 22. From the above depositions of P.Ws it is seen that there is absolutely no material against the accused to hold him guilty for the alleged occurrence.
- In the backdrop of foregoing discussions and on careful scrutiny of entire evidence of record, and keeping in mind facts and circumstances of the case, I am of the view that the prosecution has failed to prove the charge U/S 448/326 IPC, read with Section 8 of POCSO Act against the accused Rajib Robi Das beyond all reasonable doubts. Accordingly I hold the accused not guilty and he is acquitted of the aforesaid charges levelled against him and set at liberty forthwith. Bail bond stands cancelled.
- 24. Judgment prepared, pronounced and delivered in the open court under my hand & Seal of this court on this the, 24th day of May 2016 at Sivasagar.

(Sri S. Khound.) Special Judge, <u>Sivasagar</u>

Dictated & Corrected by me

(Sri S. Khound.) Special Judge, <u>Sivasagar</u>