

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

::::UDALGURI

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

Special (POCSO) 30/2019

U/S 06 of POCSO Act

State of Assam

-Vs-

- 1. Safikul Haque and**
- 2. Mafidul Haque.....Accused persons.**

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

For the Accused : Mr. R. Khaklary, Learned Advocate.

Date of Evidence : 04-02-20: 12-02-20.

Date of Argument : 12-03-2020.

Date of Judgment : 16-03-2020.

J U D G M E N T

1. The prosecution case in brief is that, in the intervening night of 5/6-11-2017, at about 03 am, the accused persons Mafidul Haque and Safikul Haque on the pretext of taking the victim girl to her home from a function organized at Dimakuchi Tea Garden, took her on their motorcycle and in Section No. 10 of Dimakuchi Tea Garden committed rape upon the victim. Hence, the mother of the victim girl lodged FIR with the Officer-in-Charge of Dimakuchi P.S.

2. On the basis of the FIR, Dimakuchi PS Case No. 84/17, under Section 5(g) of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 5(g) of POCSO Act against the accused persons Safikul Haque and Mafidul Haque.
3. Thereafter, the learned Special Judge vide Order dated 08-07-2019, transferred the case to this court for disposal.
4. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offence under Section 6 of POCSO Act, charge was framed there under and the ingredients of charge under Section 6 of POCSO Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove its case examined the following 03(three) witnesses:
 - PW1- Dr. Bimal Ch. Boro.
 - PW2- Mariyam Orang.
 - PW3- Victim-A.
6. The statement of the accused persons had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
7. Situated thus, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused persons in furtherance of their common intention committed gang penetrative sexual assault upon Victim-A, aged about 15 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

8. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. R. Khaklary.
9. Learned Addl. P.P. has argued that there is consistent, cogent and reliable evidence of all the prosecution witnesses to bring home the guilt of the accused that he committed an offence punishable under Section 6 of POCSO Act.
10. Per contra learned defence counsel has argued that both the mother(informant) and victim of the instant case have not adduced evidence implicating the accused persons. According to PW1, on being compelled by the villagers, she lodged the FIR. There is no any incident of sexual assault upon the victim by the accused persons. Hence, prosecution has miserably failed to prove the charges against the accused persons under Section 6 of POCSO Act.
11. 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 evidences adduced by the prosecution.
12. PW1 is Dr. Bimal Ch. Boro. In his evidence PW1 had deposed that on 07.11.2017, he was working as M&H.O1 at Udalguri Civil Hospital. On that day, he examined the victim girl, vide reference to Dimakuchi PS case No.84/17 U/S 5(g) of POCSO Act. The victim was examined in presence of Hira Daimari(GNM) and Nayami(GNM). On examination, he found the following:-
Physical examination:-
 Height- 168 cm, weight- 40 Kg, teeth- 28 Nos., auxillary hair- present, pubic hair- present, breast- developed, vaginal injury-mucosa abrasions over the vaginal wall, hymen-absent, marks of violence- , Clothing's- pink black shallower,

Smear examination vide Red No. UCH 12342/2017 shows no spermatozoa seen in this slide.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination plate No. 2077 dated 08.11.17 reported by radiologist.

Epiphyseal union completed in upper end of radius and ulna and lower end of humerus. Epiphyseal union not completed in lower end of radius and ulna and iliac crest.

PW1 had deposed in his opinion that:

- i) No spermatozoa seen in this slide.
- ii) Approximate age of 16-17 (Sixteen to Seventeen) years.

Ext.1 is the report and Ext.1 (1) is the signature of PW1.

In cross-examination, PW1 had stated that in his report, he did not give any opinion with regard to sign of recent sexual act upon the victim.

13. PW2 is Smt. Mariyam Orang, mother of the victim and informant of the instant case. PW2 has not deposed anything implicating the accused. According to PW2 on the date of occurrence, in the evening her daughter Priyanka Orang went to Dimakuchi Tea garden to perform dance in a function held in the Tea garden. In the night, her daughter returned from the function alongwith both the accused persons in a bike. On the way, the bike of the accused persons fell down. Then the villagers caught them and took them to Dimakuchi PS. The villagers informed her about the incident. Then, she went to Dimakuchi PS where on being compelled by the villagers, she lodged FIR against the accused persons. She did not ask her daughter anything before filing of the FIR. In course of investigation, Police got her daughter examined by doctor of Udalguri Civil hospital. She was also produced before the learned Magistrate for recording her statement. Ext-2 is the FIR. Ext-2(1) is the signature of PW2. In cross-examination, PW2 had stated that her daughter was previously acquainted with both the accused persons therefore she came alongwith them on their bike. Both the accused persons did not misbehave with her daughter.

14. PW3 is victim-A. In her evidence PW3 had deposed that on the date of occurrence, in the evening, she went to Dimakuchi Tea garden to attend a function held in the Tea garden. In the night, she returned alongwith both the accused persons in their bike from the function. On the way, the bike of the accused persons fell down. Then the villagers caught them and took them to Dimakuchi PS. The villagers informed her mother about the incident. Then, her mother went to Dimakuchi PS where on being compelled by the villagers, her mother lodged FIR against the accused persons. In course of investigation, Police got PW3 examined by doctor of Udalguri Civil hospital. She was also produced before the learned Magistrate for recording her statement. Ext-3 is the statement recorded U/S 164 Cr.P.C. Ext-3(1) is the signature of PW3. In cross-examination, PW3 had stated that the accused persons did not misbehave with her. She gave her statement before the Magistrate as tutored by the villagers. At the time of occurrence, she was aged about 18 years.

15. On appraisalment of the evidence on record it appears that both PW2, the informant and mother of the victim girl; and PW3, the victim girl are the vital witnesses of the case and they have not adduced anything implicating the accused persons. According to PW2 on the date of occurrence, in the night her daughter(victim-A) after performing dance in a function held in the Dimakuchi Tea garden, returned from the function alongwith both the accused persons on a bike. On the way, the bike of the accused persons fell down. Then the villagers caught them and took them to Dimakuchi PS. It appears from the evidence of PW2 that on being compelled by the villagers, she lodged FIR against the accused persons. In her cross-examination, PW2 had revealed that the accused persons did not misbehave with the victim girl. Corroborating the evidence of PW2; PW3, the victim girl had deposed in the same tune that on the date of occurrence, in the night, she returned alongwith both the accused persons on their bike from the function. On the way, the bike of the accused persons fell down. Then the villagers caught

them and took them to Dimakuchi PS. Then, her mother went to Dimakuchi PS where on being compelled by the villagers, her mother lodged FIR against the accused persons. The accused persons did not misbehave with her and at the time of occurrence she was aged about 18 years. Hence, evidence on record do not reveal any incident of gang penetrative sexual assault upon the victim by the accused persons. Therefore, I am of the considered view that prosecution has miserably failed to prove the charges under Section 6 of POCSO Act against the accused persons Safikul Haque and Mafidul Haque.

16. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

17. In the result, the accused persons Safikul Haque and Mafidul Haque are found not guilty under Section 6 of POCSO Act and acquitted of charge under Section 6 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.

18. Bail bond executed by the accused persons and the sureties shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.

19. Judgment is signed, delivered and pronounced in the open court today the 16th day of March, 2020.

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) 30/2019****APPENDIX**

(A) Prosecution Exhibits :

Ext.-1 : Medical report.

Ext.-2 : FIR.

Ext.-3 : Statement of victim u/S 164 Cr.P.C.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Bimal Ch. Boro.

PW2- Mariyam Orang.

PW3- Victim-A.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N. Talukdar)
Addl. Sessions Judge.
Udalguri.