# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

# JUDGMENT IN SPL.(POCSO) CASE NO. 20(DH) 2018.

U/S 4 of POCSO Act.

(G.R. Case No.258/2018 (SLP), Silapathar P.S. Case No.107/2018 Under Section 4 of POCSO Act)

The State of Assam

- Versus -

Shri Fulson Jimey ......Accused Person

S/O Lt. Dhaniram Jimey,

R/O Tongani Maj Gaon,

P.S. Silapathar,

Dist.- Dhemaji.

### Appearance:

Shri A. Fogla,

Public Prosecutor ..........For the State

Smti Ila Borgohain ......For the Accused

Date of prosecution evidence : 05-07-2018

Date of argument : 02-08-2018

Date of Judgment : 02-08-2018.

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#### JUDGMENT:

- 1. The prosecution case in brief is that on 18-3-2018 complainant-Smt. Bidyawati Morang , W/O Bhisma Nath Morang, R/O Tongani Maj Gaon, P.S. Silapathar, District- Dhemaji lodged an ejahar with Silapathar Police Station alleging interalia that about 1 ½ months ago (from the date of filing the ejahar on 18-3-2018) the accused-Fulson Jimey taking advantage of absence of other family members at home, came to their house and committed rape on her daughter-Smti 'X' (name is withheld) inside their house. It is stated in the ejahar that the victim girl is a physically handicapped one.
- 2. On receipt of the ejahar police registered a case vide Silapathar P.S. Case No.107/2018 u/s 4 of the POCSO Act. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Fulson Jimey u/s 4 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. On perusal of evidence of witnesses, it is seen that the witness did not implicate the accused as to the involvement in the alleged commission of offence. However, the accused was examined u/s 313 of Cr.P.C.

### 4. Point for determination:

(1) That you, about 1  $\frac{1}{2}$  months prior to the date of filing the ejahar dated 18-3-2018 inside the house of the complainant at Village Tongani Majgaon under Silapathar Police Station, committed

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penetrative sexual assault on Smti 'X', a minor girl aged about 16 years and thereby you committed an offence punishable u/s 4 of the POCSO Act.

5. I have gone through the evidence on record and heard arguments of both sides.

## **Discussion, Decision and Reasons thereof**:

- 6. **PW1** Smti Bidyawati Morang stated that she is the complainant. She knows the accused. The incident took place about 3 months back (from the date of her deposition). ON the day of occurrence her daughter (victim) was alone at home. When she came home her daughter (victim) told that the accused came to their house and she shouted and then the accused left. They thought that the accused abused their daughter. They informed the police and lodged complaint. Police got the victim medically examined but did not find any sign of sexual intercourse. He daughter (victim) is not suffering from any sexual abuse. Theyy lodged the complaint on suspicion. Exhibit-1 is the ejahar and Ext-1(1) is her signature therein.
- 7. **PW2** Smti 'X' stated that she knows the accused. The occurrence took place about <sup>3</sup>/<sub>4</sub> months ago. She was at home. Accused came to their house. Then she shouted and accused left. (the victim cannot speak fluently/clearly and her mother assisted the Court in recording her statement).
- 8. From the discussion of the evidence on record, it appears that in this case the complainant and the victim girl were examined as P.W-1 and PW2 respectively. In their evidence both the vital witnesses stated that on the date of occurrence the accused came to their house in absence of other family members at home. Victim then shouted and the accused left. The victim only was at home on that day. PW2 the victim categorically stated that

the accused came to their house and then she shouted. The accused then left the place. From the evidence of the P.Ws, it is seen that the parties have compromised the case outside the Court and hence they are not inclined to proceed in this case against the accused. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offence. I find that the prosecution has totally failed to prove the charge u/s 4 of the POCSO Act against the accused.
- 10. In view of the above, I find accused-**Fulson Jimey** not guilty u/s 4 of the POCSO Act. Accordingly, he is acquitted of the charge leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 2<sup>nd</sup> day of August/2018.

Special Judge, Dhemaii.