IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 09/2019
(Arising out of Kalgachia P.S. Case No. 621/2017)
U/S 4 R/W section 18 of POCSO ACT, 2012

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 28.05.2019

State of Assam

- Vs -

Kh. Lutfor Rahman....Accused person.

Date of Recording Evidence on – 28.08.2019

Date of Hearing Argument on – 28.08.2019

Date of Delivering the Judgment on - 28.08.2019

Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused-----Mr. Altaf Hussain, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, as narrated in the FIR is that one Abbas Ali lodged an FIR in Kalgachia police station alleging inter alia that on 08.09.2017 at about 1:15 pm accused named in the FIR allegedly tried to commit sexual assault on the minor daughter of the informant aged about 7 years by removing her clothes but due to screaming of the girl, she was rescued from the clutches of the accused person. Delay has been caused in lodging the FIR for waiting a settlement from the society.
- 2. Receiving the information, Kalgachia police station registered a case being Kalgachia P.S. case No.62/17 u/s 8/18 of POCSO Act and took up investigation.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statements of the witnesses, arrested the accused person and on completion of investigation finally laid the charge sheet against accused u/s 8/18 of POCSO Act with a view to stand trial.
- 4. During the course of time, accused entered his appearance in court to

face trial. On his appearance, after due compliance of Section 207 Cr.P.C. and hearing the learned lawyers appearing for both sides and having found a primafacie case framed charges against accused u/s 8/18 of POCSO Act with a view to stand trial.

- 5. During the course of trial, prosecution, however, examined only 2 witnesses namely- the alleged victim and informant but unfortunately both the prosecution witnesses failed to lend any credible evidence to implicate the accused person. Therefore, considering the nature of evidence adduced by PW-1 and PW-2 this court having no option, closed the prosecution evidence after giving an opportunity of hearing to learned Addl. P.P.
- 6. Examination of accused u/s 313 Cr.P.C. is dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. On being asked accused however, declined to adduce defence evidence.

7. Now point for determination ;-

1. Whether on 08.09.2017 at about 1:15 pm accused made attempt to commit penetrative sexual assault on the victim girl namely-(X) aged about 7 years by removing her clothes as alleged?

8. Discussion, Decision and reasons for such decision:

I have heard the learned lawyers appearing for both sides and also gone through the evidence of the prosecution witnesses.

- 9. PW-1 Abbash Ali who is the informant of the case deposed in his evidence in court that the incident occurred about two years back but he could not remember the date as he went to weekly market and on his return he heard it from his wife.
- 10. In his cross examination however, he stated that he do not know what was written in the FIR.
- 11. On the other hand, PW-2 the alleged victim girl also deposed that there was a quarrel with Babu, son of accused regarding playing Ludo. In the mean time, accused also threatened her to leave his house by giving her a slap.
- 12. Now, let me examine what is there in section 4 of POCSO Act.

<u>Section 4 Punishment for penetrative sexual assault.</u>- Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

13. Now, on perusal of the offence u/s 4 of POCSO Act it transpires that in order to

constitute the offence u/s 4 of POCSO Act the accused is to committed penetrative sexual

assault of the victim or did certain act towards this end such as by inserting to any extent,

any object or a part of body or manipulates any part of the body of the child so as to cause

penetration into the vagina or applies his mouth on the penis, vagina or anus etc. But in her

evidence the alleged victim girl have not stated anything whatsoever which constitute the

offence u/s 4 of POCSO Act. Neither PW-1 nor PW-2 have said anything else in court.

Given the nature and quality of evidence of PW-1 and PW-2 going ahed with the case would

be nothing but a fruitless exercise at the cost of valuable time and energy of the court.

14. In the result, this court has no option but to acquit the accused from the charge u/s

4/18 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.

5. The terms of bail bond of accused person is extended for a period of 6 (six) months

from to-day as provided u/s 437(A) Cr.P.C.

16. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for

his information as provided in section 365 Cr.P.C.

17. Let the case record be consigned to record room after completing the formalities.

18. Given under my hand and seal of this Court on this 28th day of August, 2019, at

Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi)

Special Judge, Barpeta.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = Abbash Ali, the informant.

PW-2 = victim girl (X).

2. The prosecution exhibited only one document:

Ext. 1 = is the ejahar.

Ext.1(1)= is the signature of informant, Abbash Ali.

Sd/-

(Sri C. B. Gogoi) Special Judge, Barpeta.