# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge,

Dhemaji,

# JUDGMENT IN SPECIAL(POCSO) CASE NO. 25(JN) 2018.

(G.R. Case No.49/2018 ;Jonai P.S. Case No.36/2018 Under Section 377 of the Indian Penal Code R/W Sec. 4 of POCSO Act.)\

The State of Assam

- Versus -

Shri Mainul Hoque ......Accused Person

S/O Mohmmad Ali,

R/O Saulasara,

P.S. Kalgasia,

Dist.- Barpeta.

**Appearance:** 

Shri A. Fogla,

**Public Prosecutor** 

.....For the State

Shri. Bipt | Gogoi

.....For the Accused

**Date of prosecution evidence** 

: 13-08-2018

Special Judge,
Opensell.

**Date of argument** 

: 13-08-2018

**Date of Judgment** 

: 13-08-2018.

#### JUDGMENT

- 1. The prosecution case in brief is that on 10-04-2018 complainant-Sri Biju Dutta lodged an ejahar with Jonai Police Station alleging interalia that on 12-12-2017 at about 2 PM in the afternoon the accused sent his minor son Mousam Dutta aged about 9 years to bring tobacco from the house of the accused situated at Madhya Bijoypur and thereafter the accused committed carnal intercourse on his son against the order of the nature in the broiler godown of the accused. It is also alleged in the ejahar that complainant's son did not inform the fact to him or any other person. When his son feeling pain on his anus, his son informed his father that the accused committed carnal intercourse with him.
- 2. On receipt of the ejahar police registered a case vide Jonai P.S. Case No.36/2018 u/s 377 of I.P.C., R/W section 4 of POCSO Act. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Mainul Hoque u/s 377 of I.P.C., R/W section 4 of 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 377 of IPC read with Section 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 witnesses did not implicate the accused as to the

Special Judge,

involvement in the alleged commission of offence. However, the accused was examined u/s 313 of Cr.P.C. Defence declined to adduce an y evidence.

### 4. **Points for determination**:

- (1) That you, on 12-12-2017 at about 2 PM at village Madhya Bijoypur under Jonai Police Station had carnal intercourse against the order of nature with Shri Mousam Dutta, a minor boy aged about 9 years, and that you thereby committed an offence punishable u/s 377 of I.P.C. R/W section 4 of POCSO Act
- 5. I have gone through the evidence on record and heard arguments of both sides.

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

- 6. PW1 the victim Shri Mousam Dutta stated that complainant is his father. He knows accused Moinul Hoque. Incident took place about 8/9 months back. Accused has a shop near their house. While going to and coming from school he very often visited the shop of the accused to buy chocolate. Accused used to talk with him and he also offered chocolate. Sometimes he stayed with the accused and played with him. On the date of occurrence he asked for chocolate, but accused refused to give the same as he did not have money. Accused also scolded him and he cried and his father lodged complaint with police. In cross examination PW1 has stated that the accused has not abused him physically as stated in the complaint.
- 7. PW2 Shri Biju Dutta stated that he is the complainant. He knows accused Moinul Hoque. The incident took place about 8/9 months back. Accused has a shop near their house. While his son going to and coming from school he very often visited the shop of the accused to buy chocolate. Accused also used to talked with him and he offered chocolate to his son. Sometimes he stayed with the accused and played with him. On the date of occurrence he asked for chocolate, but accused refused to give the same as he did not have

Special Judge,
Ohemail.

money. Accused also scolded his son and so he cried and he (PW2) lodged complaint with police. Ext.1 is ejahar. Ext.1(1) is his signature. In cross-examination PW2 stated that accused has not physically abused his son as stated in the complaint. As his son came back home from school crying and he told him that accused scolded his son. He lodged complaint against the accused. After filing of the case he enquired and came to know that the accused did not physically abused him. There was some misunderstanding and hence he lodged complaint against the accused.

### Appreciation of evidence:

- 8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant were examined as PW-1 and PW2 respectively. In their evidence both the vital witnesses stated that on the date of occurrence the son of the complainant went to the shop of the accused and asked for chocolate, but the accused refused to give him chocolate as he (PW1) did not have money with him. Both the witnesses (PW1 & PW2) have stated that the accused scolded PW1 (victim boy) and he cried. Thereafter PW2, father of the PW1, lodged complaint against the accused. In cross examination both PWs have admitted that the accused did not abuse him (PW1) physically. There was some misunderstanding and hence PW2 filed this case. From the evidence of both the vital witnesses (PW1 and PW2), it is seen that both the parties have compromised the case outside the court and hence, they are not willing to proceed against the accused.
- 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 offences u/s 377 IPC R/W section 4 of POCSO Act. I find that the prosecution has totally failed to prove the charges u/s 377 IPC R/W section 4 of POCSO Act.

Special Judge,
Dhemail.

- 10. In view of the above, I find accused-**Moinul Hoque** not guilty u/s 377 IPC R/W section 4 of POCSO Act. Accordingly, he is acquitted of the charges 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 13<sup>th</sup> day of August/2018.

(S. Das)

Dhemaji.