IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL CASE NO.14/2017.

Under Section -8 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Sri Joymal Morang. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. Arup Bora, Advocate. ... For the Accused.

Date of framing of charge. :29.05.2017.

Date of taking evidence. :20.06.2017, 20.11.2017, 24.01.2018 and

06.06.2018

Date of hearing Argument. :31.07.2018. Date of delivery of Judgment.:31.07.2018.

JUDGMENT

1. The case of the prosecution may in brief describe thus:
On 09.02.2017, the informant, Smti Banti Doley lodged an
ejahar with Dhakuakhana Police Station to the effect that on 26.01.2017 at about
1.30 pm, her minor daughter victim X aged about 7 years went to the bank of
river near her house to answer the call of nature, and while the victim X was
answering the call of nature, at that time, the accused, Sri Joymal Morang caught

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hold of her and took her into the jungle and committed rape on her person. The accused after committing rape intimidated the victim X by saying that if she would disclose the matter, she would be killed. The victim X under his fear did not narrate the occurrence to her. But, as the victim X failed to pass urine and on her query the victim X stated to her regarding commission of rape upon her person by the accused, Sri Joymal Morang.

- 2. On receiving the ejahar, the Officer-in-charge of Dhakuakhana P.S. registered a case vide Dhakuakhana P.S. Case No.26/2017 under Section 376 IPC and under Section 8 of the POCSO Act.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared sketch map of the place of occurrence. The I.O recorded the statement of the witnesses u/s 161 CrPC. The I.O. got the victim X examined by a doctor of North Lakhimpur Civil Hospital. The I.O. forwarded the victim X before the court for recording her statement u/s 164 CrPC, but the learned Sub Divisional Judicial Magistrate (M), Dhakuakhana failed to record the statement of the victim X u/s 164 CrPC as she had not developed her capacity of understanding. The I.O. arrested the accused, Sri Joymal Morang and forwarded him to judicial custody. The I.O. after completion of the investigation of the case on being found sufficient incriminating materials against the accused, Sri Joymal Morang under Section 8 of the POCSO Act, accordingly, submitted the charge-sheet against the accused, Sri Joymal Morang u/s 8 of the POCSO Act.
- 4. The accused, Sri Joymal Morang made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, sufficient materials under Section 8 of the POCSO Act have been found against the accused person in the case record. Accordingly, charge under Section 8 of the POCSO Act was framed against the accused, Sri Joymal Morang. The charge was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 6 (six)
- 6. The recording of the statement of the accused person under Section 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.
 - 7. The accused person led no evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution side in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Sri Joymal Morang on 26.01.2017 at 1.30 pm at village Bahir Bogori Gaon under Dhakuakhana Police Station had committed sexual assault on the victim X aged about 7 years?

11. **DECISION AND REASONS**

The prosecution side examined 6 (six) witnesses. PW.1, Smti Banti Doley is the mother of the victim X. PW.2 is the victim X. PW.3, Sri Nayan Doley, who is an independent witness. PW.4, Sri Russia Doley is also an independent witness. PW.5 is Dr. (Mrs.) Mousumi Saikia, who is the Medical Officer of the case. PW.6, Sri Gobinda Barman is the Investigating Officer of the case.

PW.1, Smti Banti Doley, in her evidence, stated that she knows the accused, Sri Joymal Morang. The victim X is her daughter, who is about 7 ½ years and has been reading in class-II. She also stated that the occurrence had taken place on a day in the month of August, 2017 at 1 pm. She,

in her evidence, also stated that at the time of occurrence, her daughter victim X went to answer the call of nature nearby her house, at that time, she saw the accused person, who arrived at that place, and on seeing the accused person suddenly the victim X afraid and after returning back to the house, she fell ill. She, in her evidence, further stated that when she asked her daughter victim X, her daughter victim X told her that she had seen the accused person suddenly near her, so she got frightened and fell ill. She also stated that then she lodged the ejahar with the Dhakuakhana P.S. out of anger.

This is the evidence adduced by PW.1 in her examination-in-chief. Thereafter, she was declared hostile by the prosecution and she was subjected to cross-examination by the prosecution side, but the prosecution side failed to bring out any fact in their favour by cross-examining her. On careful scrutiny of the evidence of PW.1, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.2, the victim girl, in her evidence, stated that she knows the accused person. She also stated that when she went to attend the call of nature in the jungle nearby her house, then the accused person suddenly appeared before her, and as a result she got afraid. She also stated that the accused person has done nothing else. She, in her evidence, also stated that the accused person did not commit anything upon her person.

There is no incriminating material against the accused person regarding commission of any offence.

PW.3, Sri Nayan Doley, in his evidence, stated that about 9/10 months back, one day, he heard that the victim X had gone out to answer the call of nature to a nearby jungle of her house, but suddenly seeing the accused, Joymal Morang, she ran away towards her house. He also stated that on the following day, he went to the house of the informant, who is the mother of the victim X and asked her about the occurrence. He, in his cross-examination, stated that the victim X out of fear fled away after seeing the accused in the

jungle while she was attending call of nature nearby her house. He also stated that he heard this fact from the mother of the victim X.

This is the evidence adduced by PW.3. On careful scrutiny of the evidence adduced by the PW.3, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.4, Sri Russia Doley, in his evidence, stated that about six months back, the daughter of Smti Banti Doley, went to answer the call of nature at a field nearby her house, at that time, the accused Joymal Morang went to the field and suddenly on seeing the accused, she got afraid and went away towards her house and told her parents about the occurrence.

This is the evidence adduced by PW.4. On careful scrutiny of the evidence adduced by PW.4, it is appeared that he had not seen the occurrence. He heard about the same from someone, but he had not mentioned the name of the person from whom he came to know about the occurrence. From his evidence, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.5 is Dr. (Mrs.) Mousumi Saikia, who had examined the victim X and PW.6 is Sri Gobinda Barman, who is the Investigating Officer of the case and submitted the charge sheet in the case.

Consideration of the evidence adduced by PW.5, Dr. (Mrs.) Mousumi Saikia, who is the Medical Officer of the case and PW.6, Sri Gobinda Barman, who is the Investigating Officer of the case, is not necessary in view of the evidence adduced by the other non-official witnesses as consideration of the their evidence has no effect towards the decision of the case.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charge under Section 8 of the POCSO Act brought against the accused person, Sri Joymal Morang and the accused person deserves to be acquitted.

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13. I, therefore, hold the accused person, Sri Joymal Morang not guilty and acquit him from the charge under Section 8 of the POCSO Act. The accused person is set at his liberty forthwith.

14. The bail bond of the accused person is cancelled and his surety is discharged.

\$15.\$ Given under my hand and the seal of this court on this the 31^{st} day of July, 2018.

(M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

<u>APPENDIX</u>

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Smti Banti Doley.

PW.2 – Victim X.

PW.3 – Sri Nayan Doley.

PW.4 – Sri Russia Doley.

PW.5 - Dr. (Mrs.) Mousumi Saikia, M.O. of the case.

PW.6 - Sri Gobinda Barman, I.O of the case.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

3. DOCUMENTS PRODUCED IN THE CASE:

Ext. – Charge sheet.

(M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.