IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

<u>Spl. (P) Case No. 44 of 2017 U/S 4 of POCSO Act 2012</u> (Arising out of Sonari P.S. Case No. 208/2017)

State of Assam

-Vs-

Sri Munu Bhumij Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. Pulin Gogoi, Advocate

Date of framing Charge : 11.12.2017
Dates of Evidence : 23.02.2018
Date of Argument : 23.02.2018
Date of Judgment : 23.02.2018

<u>JUDGMENT</u>

- 1. Prosecution case, in brief, is that on 06.09.2017, informant Sri Suruj Nayak lodged an FIR with O/C, Sonari P.S. alleging, inter alia, that on 27.08.2017, at about 6.00 PM, while his sister victim 'P' (name withheld) went to market, accused Munu Bhumij, by gagging her mouth forcibly took her to nearby Hatkhula Primary School and committed misdeed with her. It is also alleged that victim was criminally intimidated not to divulge the matter before anybody, else she will face dire consequences.
- 2. On this FIR, Sonari P.S. Case No. 208/2017, U/S 4 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was

medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody.

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 4 of POCSO Act, 2012.
- 4. Upon taking cognizance on the charge sheet, after furnishing copy to the accused, vide order dated 11.12.2017, charge U/S 4 of POCSO Act, 2012 have been framed against the above named accused person to which he pleaded not guilty and claimed to stand trial. It may be noted there that initially the accused was provided the service of Legal Aid Counsel through Mr. D K Gohain Advocate but subsequently, the same was withdrawn as accused appointed his own advocate for his defence.
- During trial, prosecution side has examined only three witnesses including the informant and the victim. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- 6. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. D.K. Gohain, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

7. (I) Whether on 27.08.2017, at about 6.00 P.M. accused committed penetrative sexual assault on the victim 'P'?

DECISION AND REASONS THEREOF

8. PW-1 Sri Suruj Nayak informant of this case and brother of the victim in his evidence deposed that present age of the victim P is about 19 years. On the day of filling the FIR his sister victim P reported him that about a week back while she went to market, accused Munu Bhumiz has teased her by

saying SANGO (sister-in-law). On knowing this, out of anger, he lodged the FIR at Sonari PS. Exbt. 1 is the FIR. In his cross-examination PW 1 admitted that he cannot say about the contents of the FIR. Due to some misunderstanding, he have lodged the FIR. He has no objection in acquittal of the accused.

- 9. PW-2 the victim P in her evidence deposed that her present age is about 19 years. About a week of the filling the FIR, while she went to market, accused Munu Bhumiz has teased her by saying SANGO (sister-in-law) and many other words. After about a week, on return of her brother from Moran, she informed the matter to him. On knowing this, out of anger, he lodged the FIR at Sonari PS. Police came to investigate the matter and interrogated me. Police took her for medical examination and also to Court. In her cross-examination PW 2 admitted that except teasing, accused did nothing with her. She denied the defence suggestion that accused did not tease her as alleged. Presently they have compromised the matter in village. Sh ehas no objection in acquittal of the accused.
- 10. PW-3 Smt. Radha Sabar cousin-in-law of the victim in her evidence deposed that she has no knowledge about any incident between the accused and the victim Priti.
- 11. From the above evidence on record, it appears that victim is aged about 19 years. Defence did not challenge this fact.
- So far charge of sexual assault is concerned, from the evidence of PW 1 and PW 2 it appears that none of them deposed anything against the accused implicating him with the alleged offence sexual assault. From their evidence it appears accused has teased the victim by saying SANGO (sister-in-law) and many other words. After about a week of the incident, FIR was lodged. P.W. 2 admitted that except teasing, accused did nothing with her. PW 1 admitted that due to some misunderstanding he has lodged the FIR. Both P.W. 1 and 2 in their cross examination clearly stated that presently they have

no objection in acquittal of the accused. P.W.3 deposed nothing regarding the incident between the accused and the victim 'P'. Thus it is clear that there was no material whatsoever regarding penetrative sexual assault (rape) by the accused.

- 13. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 4 of POCSO Act, 2012 against the accused As such, accused Sri Munu Bhumij is acquitted from the charges U/S 4 of POCSO Act, 2012 and set at liberty forthwith.
- 14. Issue release order to the Jail Supdt. of District Jail, Sivasagar forthwith.
- 15. As the accused is in Jail, no order is passed U/S 437 A Cr.P.C.
- 16. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 17. Learned legal aid counsel is entitled for his professional fees from DLSA as per rules.
- 18. Send a copy of the judgment to learned District Magistrate, Charaideo U/S 365 Cr.P.C.
- 19. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 23rd day of February 2018 Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Sri Suruj Nayak (Informant)
 - P.W.2 Victim 'P'
 - P.W.3 Smt. Radha Sabar
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution Exbt.1 FIR

Special Judge, Sivasagar: