IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.24/2018

U/S-8 of POCSO Act, 2012

State of Assam

-Versus-

Mubarak Ali

s/o-Md. Mahar Ali

Resident of vill –No. 2 Uttar Rangapani

P.S.-Nagarbera

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State

A. Paramanik, Advocate ------for the accused

Date of evidence: 11.10.2018, 13.12.2018

Date of Argument:17.12.2018

Date of Judgment:17.12.2018

JUDGEMENT

- 1. The Prosecution case in brief is that—on 08.08.2016 the Complainant lodged an ejahar alleging that on 06.08.2016 at about 9/10 p.m, while she was alone in her house, the accused—Md. Mubarak Ali entered inside the house and he tried to commit rape upon her. And hence, this FIR.
- 2. On the basis of the said ejahar, Nagarbera P.S Case No. 118/2016 U/S-8 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 8 of the POCSO Act, 2012 against accused— Md. Mubarak Ali. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as three (3) numbers of witnesses including the informant/victim. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 06.08.2016 at about 9/10 p.m at village No.1 Uttar Rangapani under Nagarbera P.S tried to rape the the informant/victim when she was alone in her house, and thereby committed sexual assault on the minor victim girl within the meaning of section 7 of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S-8 of the POCSO Act, 2012 ?

6. **DISCUSSION, DECISION AND REASONS THEREOF**

Perused the record. Heard Ld. Counsels for both the sides. In support of the case, prosecution examined three (3) witnesses.

- 7. Let us go through the evidences available on record.
- 8. P.W.2, Amina Khatun is the informant and victim of this case. She stated that she knows the accused person- Mubarak Ali and they had love affairs since 6 months before the occurrence and he assured to marry her. The incident took place about two years ago. She was aged about 14 years at that time and was studying in class-VIII. P.W.2 stated that on the relevant date, while she was coming from school, she met the accused person in the road. An altercation took place between them as the accused told her that he does not want to marry her. P.W.2 got angry and she told her parents and then lodged the ejahar. P.W.2 revealed that accused did not do anything with her as alleged in the ejahar and as alleged before the Magistrate. She further revealed that she deposed before the Magistrate as tutored by her village people. Ext.1 is the ejahar. Ext. 1 (1) is her signature. Ext.2 is the statement U/S-164 Cr. P.C. Ext. 2 (1& 2) are her signatures. Police recorded her statement. P.W.2 is married to another person at present.
- 9. P.W.1, Abdul Hannan stated that he knew the informant/victim as well as the accused. He only heard from the village people that the accused had come to the house of the victim at night. He stated that P.W.1 stays in the house alone with her younger sister as the parents of the victim have expired.
- 10. P.W.3 Md. Amjad Ali deposed in his evidence that informant/victim of this case is his sister. He knows the accused person—Mubarak Ali. P.W.3 stated that the accused and victim had love affairs since 6 months before the occurrence and the accused assured to marry her. He heard that the victim lodged the ejahar against the accused person out of anger as he refused to marry her. This witness stated clearly that accused did not do anything with the victim as alleged in the ejahar and as stated before the Magistrate. At present, victim is happily married with another person.

- 11. I have heard the arguments of both the sides. Perused the evidences on record.
- 12. In this case , charge was framed u/s 8 of POCSO Act . Now , question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence . Now, **Sexual Assault** is defined **U/S 7 of POCSO Act** as "Whoever , with sexual intent touches the vagina , penis , anus or breast of the child or makes the child touch the vagina , penis ,anus or breast of such person or any other person , or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act.
- 13. Now, in this instant case, there is no allegation by the victim girl of any sexual assault upon her by the accused person. This victim (P.W.2) made it clear in her evidence that the accused did not commit any sexual assault on her on the date of occurrence. She disclosed that she gave the ejahar against the accused person out of anger as he refused to marry her. Her evidence reveals that there was an altercation between them as the accused refused to marry her. Other P.Ws also supported the evidence of P.W.2 and confirmed that no such incident as alleged in the ejahar had taken place. So, the offence U/S- 8 of the POCSO Act is not at all attracted in this instant case.
- 14. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Mubarak Ali. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S- 8 of the POCSO Act, and set at liberty forthwith.
- 15. His bail bond stands cancelled.
- 16. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 17th day of December, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Abdul Hannan

P.W.2, Amina Khatun

P.W.3 Md. Amjad Ali

Prosecution Exhibit

Ext.1 is the ejahar.

Ext.2 is the statement of the Prosecutrix made before the Court U/S—164 Cr. P.C..

Special Judge, Kamrup, Amingaon