IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 5 (DH)/ 2018.

U/S 341/354/ of IPC R/W Sec.8 of POCSO Act.

The State of Assam

- Versus -

Shri Jintu Boruah,

S/O Rajen Boruah,

Vill. Dulia Gaon,

P.S. Dhakuakhana,

Dist.- Lakhimpur (Assam)

.....Accused Person

Appearance:

Shri A. Fogla, Public ProsecutorFor the State

Smt. Junmoni Chutia, Advocate

.....For the Accused

Date of prosecution evidence : 14-12-2018.

Date of argument

: 18-01-2019.

Date of Judgment

: 18-01-2019.

14/01/2019

JUDGMENT

- 1. The prosecution case, in brief, is that on 06-01-2018 complainant- Shri Arun Gogoi lodged an ejahar with the Dhemaji Police Station alleging interalia that on that day i.e. on 06-01-2018 at about 12.30 noon while his sister-in-law Smti Popi Saikia was returning to their rented house along with him (complainant) after appearing in her H.S. 2nd Year Test Examination, the accused-Jintu Boruah along with another boy wrongfully restrained her on the road near Dhemaji Auditorium and accused Jintu Boruah grabbed her and misbehaved her. It is also alleged in the ejahar that when the complainant protested the activities of accused, he (accused-Jintu) threatened him and then the other co-accused also identified himself as police personnel and threatened him (the complainant).
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused Jintu BOruah u/s 341/354 of IPC R/W Sec. 8 of the 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 charges u/s 341/354 of IPC R/W Sec. 8 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. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

4. Point for determination:

(1) That you, on 06-01-2018 at about 12.30 noon at Dhemaji Milan Nagar under Dhemaji Police Station, wrongfully restrained Smt.

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Popi Saikia, a minor girl, on the road near Dhemaji Auditorium and thereby you committed an offence punishable u/s 341 of IPC.

- (2) That, on the same day, time and place you used criminal force to SMti Popi Saikia, a minor girl, intending to outrage her, and thereby you committed an offence punishable u/s 354 of IPC.
- (3) Popi Saikia and thereby you committed an offence punishable u/s 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** Smti Popi stated that the Complainant is her brother-in-law. She knows the accused. Incident took place about one year back. Accused is from her village. He often tried to meet her whenever she went to college but, she was always avoiding him. On the day of occurrence while she along with her brother-in-law was returning home from the college, the accused met her on the road and he expressed that he loved her. Her brother-in-law got up-set and annoyed and she also felt disturbed because of the behavior of the accused. Then her brother-in-law lodged complaint before police so that the accused could not repeat such thing in future. After filling of the complaint, accused met her parents and apologized for what he had done on that particular day. The accused, thereafter, did not make any attempt to meet her. Earlier also the accused did not abuse her physically at any point of time.

In cross-examination PW1 stated that now they are maintaining cordial relation with the accused and they have decided not to proceed against the accused. Further, PW1 stated that she has no objection if the accused is acquitted in this case.

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7. **PW2** Shri Arun Gogoi is the complainant. He stated that the Victim (PW1) is his sister-in-law. Incident took place about one year back. Accused is from his sister-in-law's village. He often tried to meet her whenever she went to college but, she was always avoiding him. On the day of occurrence while she along with him was returning home from the college, the accused met them on the road and he expressed that he loved her. He got up-set and annoyed and he also felt disturbed because of the behavior of the accused. Then he lodged complaint before police so that the accused could not repeat such thing in future. After filling of the complaint, accused met their parents and apologized for what he had done on that particular day. The accused, thereafter did not make any attempt to meet his sister-in-law. Earlier also the accused did not abuse her physically at any point of time. Exhibit-1 is the ejahar and EXt-1(1) is his signature therein.

In cross-examination PW1 stated that now they are maintaining cordial relation with the accused and they have decided not to proceed against the accused. Further, PW2 stated that she has no objection if the accused is acquitted in this case.

Appreciation of evidence:

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Arun Gogoi (brother-in-law of the victim) were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the accused often tried to meet the victim whenever she went to her college but, the victim was always avoiding him. On the day of occurrence while she along with the complainant (PW2) was returning home from the college, the accused met them on the road and he expressed that he loved her. Both of them (PWs-1 & 2) got up-set and annoyed and they also felt disturbed because of the behavior of the accused. Then PW2 lodged complaint before police so that the accused could not

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repeat such thing in future. After filing of the complaint, accused met their parents and apologized for what he had done on that particular day. The accused, thereafter, did not make any attempt to meet the victim (PW1). Earlier also the accused did not abuse her physically at any point of time. In cross-examination, PW1 and PW2 stated that now they are maintaining cordial relation with the accused and they have decided not to proceed against the accused. They further in cross-examination stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 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. This is a case of no evidence. It is also seen from the evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused. I find that the prosecution has totally failed to prove the charges u/s 341/354 of IPC read with Sec.- 8of the POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Jintu Boruah** not guilty u/s 341/354 of the I.P.C. read with Section-8 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 **18th** day of January, 2019.

(S. Das) Spęcial Judge, Othernáji.