## IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.37/2016 U/S 354 IPC, R/W Section 4 & 8 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Sri Ajit Kumar Debnath ..... Accused

Date of Charge

:- 01.12.2016.

Date of recording evidence :- 22.02.2017.

Date of Argument

:- 22.02.2017.

Date of Judgment

:- 23.02.2017.

#### **Appearance for the Parties**

Advocate for the State:-

Mr. A. Kalam, Ld. P.P.

Advocate for the accused: Mr. U. C. Roy, Ld. Advocate.

### **JUDGMENT**

1. Filing of an F.I.R. by one Smti. Mamoni Devi of village Kahibari under Mikirbheta P.S. in the district of Morigaon with the then O/C Mikirbheta P.S. on 01.08.2016 has given rise to this prosecution case. In this F.I.R., it is alleged by the informant that on 31.07.2016 at around 7.00 P.M., the above-named accused person came to her house and committed penetrative sexual assault upon her minor daughter Miss - X (the real name is withheld to screen the victim from infamy), aged about 10 (ten) years and also intending to outrage her modesty by doing such act. It is also alleged by the informant that the accused person threatened the victim to kill if she disclosed the fact to any other person.

 On receipt of this F.I.R., O/C Mikirbheta P.S. registered a case vide Mikirbheta P.S. Case No.270/2016, U/s 376 (2) (i) IPC, read with Section 4 of POCSO Act against the above-named accused and investigation was set in motion.

During the course of investigation, the I.O. visited the place of occurrence, arrested the accused, subjected the victim to medical examination, examined the materials witnesses, drew up the sketch map of the place of occurrence, produced the victim before the Magistrate to record her statement U/s 164 of Cr.P.C. and upon conclusion of investigation, the I.O. having found sufficient incriminating materials submitted the charge-sheet against the abovenamed accused for alleged commission of offences U/s 354 (A) IPC, read with Section 4 of POCSO Act. At the time of filing charge-sheet, the accused was languishing in jail and subsequently, he got court bail. Copies of relevant documents were furnished to him. Thereafter, this Court having heard learned Counsel of both sides and basing upon the materials on record, framed charge U/s 354 IPC, read with Section 4 & 8 of POCSO Act against the above-named accused, which was read over and explained to the accused to which he pleaded innocence and claimed to be tried.

## 3. Point for determination:

- (i) Whether the accused on the eventful day i.e. on 31.07.2016 at around 7.00 P.M. at the house of the complainant of village Kahibari under Mikirbheta P.S. in the district of Morigaon, committed penetrative sexual assault on the minor daughter of the informant?
- (ii) Whether the accused on the same day, time and place committed sexual assault to the daughter of the complainant?
- (iii) Whether the accused on the same day, time and place assaulted the minor daughter of the complainant intending to outrage her modesty?
- 4. The prosecution in this case has examined only two PWs, the most vital witness, namely PW-1, the informant and PW-2 the victim and one C.W. But

their evidence did not support the prosecution case on material aspect. In such circumstances, prosecution has not willing to examine the remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for ends of justice. The accused declined to adduce defence evidence.

5. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

## **DISCUSSION, DECISION AND REASONS THEREOF**

6. In this case, it is alleged by the prosecution that on the eventful day the above-named accused committed penetrative sexual assault and also assaulted the minor daughter of the informant intending to outrage her modesty.

To prove this fact, the prosecution initially examined PW-1, the informant. She in her evidence has stated that she lodged this case. She knows the accused person. The accused is a resident in their locality. Victim Miss - X is her daughter. PW-1 has further stated that she lodged the ejahar in the month of July, 2016. According to her, the accused has friendship with her father-in-law. and on the eventful day, he came to their house to meet her father-in-law. At that time her father-in-law was absent. PW-1 has further stated that the accused called upon her daughter and he took her in his lap and showed her affection, but her minor daughter did not understand the affection and started to cry. Then, she went to that place and took away her daughter from the lap of the accused. Thereafter, she thought that the accused did some misbehavior and illegal act with her minor daughter. So, she lodged a case against the accused. PW-1 has further stated that her husband was not present at that time in their house. He works in defence service and he was stayed outside of Assam. According to PW-1, she went to the police station and the ejahar was drafted by some other person. Later on, the accused was arrested by police. She informed

her husband about the incident over phone. PW-1 proved Ext.1 the ejahar, where upon Ext.1 (1) is her signature. PW-1 has further stated that after a few days of filing this ejahar, she feels that the case was lodged against the accused due to misunderstanding, as the accused did not commit any illegal act with her minor daughter, he only showed affection to her, but her daughter did not understand and cried out of fear. PW-1 has further stated that she lodged the ejahar, suspecting that the accused had committed some illegal act with her minor daughter. In her cross-examination, PW-1 has stated that the ejahar was written by somebody else and she exactly could not say what was written in the ejahar. She lodged the case against the accused due to misunderstanding between her and the accused.

PW-2 (Miss - X), the victim girl in her evidence has stated that her mother lodged this case. The accused person was a friend of her grand-father. Sometimes, he used to come to their house. On the day of the occurrence of incident, the accused came to their house in search of her grand-father. PW-2 has further stated in her evidence that the accused person called upon her and showed some love affection to her and lifted her in his lap, thus she got afraid and started to cry and on hearing her cry her mother came there and took her from the lap of the accused. According to PW-2, her mother suspected that the accused person committed some illegal act with her and as such, her mother lodged this case. Later on, her mother came to know that the accused person did not commit any illegal act with her. The accused person only showed her love affection by kissing on her cheek. In her cross-examination, PW-2 has stated that she used to call the accused as "Kaka". On earlier occasion, the accused never committed any misbehavior with her. Her mother lodged the case against the accused suspecting that the accused committed some illegal act with her. According to PW-2, the case was lodged out of misunderstanding.

C.W.-1 (Dibyajyoti Nath), the father of the victim and the husband of informant has stated in his evidence that his wife lodged this case in the month of July, 2016. At the time of occurrence of the incident, he was posted in Uttar

Pradesh in his job. The accused has a friendship with his father and the accused person used to reside in their locality. The accused was a priest. CW-1 has further stated that his wife informed him that on the day of occurrence, the accused came to their house to meet his father, thereafter, the accused called his daughter Miss- X and took her in his lap, so, she started crying. Then, his wife came to that place and took away his daughter from the lap of the accused. According to CW-1, his wife lodged the case against the accused suspecting that the accused committed some illegal act with his daughter. Later on, he came to know that the accused did not commit any illegal act with his daughter, he actually showed affection to his daughter. In his cross-examination, he has stated that the case was lodged against the accused person out of misunderstanding.

Thus, we have found that none of these witnesses including the most vital PWs (i.e. complainant and victim) uttered a single word as regards penetrative sexual assault being allegedly committed by the accused and also the allegations as alleged in the F.I.R.

- 7. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim herself stated that the accused did nothing wrong to her. So, we have found that the most material witness of this case as PW-1 & PW-2 did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. mandates an acquittal of the accused from an offence, which states that " If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."
- 8. In view of the above discussion and in view of Section 232 Cr.P.C., I have found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 354 of IPC, read with Section 4 & 8 of POCSO Act and as such, he is acquitted and set at liberty. In this case, since the victim girl has completely negated the prosecution case, therefore, she is not entitled to receive any compensation under section 357 A Cr.P.C.

Judgment is delivered and pronounced in the open Court on this 23<sup>rd</sup> day of February, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

# **APPENDIX**

## A. Prosecution witness

- 1. PW-1: Smti. Mamoni Devi,
- 2. PW-2 :- Miss Niharika Devi,
- **B.** Court Witness:
- 1. CW-1: Sri Dibyajyoti Nath,
- C. <u>Defence witness: Nil.</u>
- D. Prosecution Exhibit:
- 1. Ext.1:- the ejahar.
- E. Defence exhibits :- Nil.

Sessions Judge, Morigaon.