IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPECIAL (POCSO) CASE NO. 45(DH)/ 2018.

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

The State of Assam

- Versus -

Shri Dibya Gogoi,

S/O Lt. Suren Gogoi,

Vill. No.2 Borachira,

P.S. Dhemaji,

Dist.- Dhemaji,Accused Person.

Appearance:

Shri A. Fogla,

Public ProsecutorFor the State

Shri B.Gogoi, AdvocateFor the Accused

Date of prosecution evidence : 22-11-2019.

Date of argument : 22-11-2019.

Date of Judgment : 27-11-2019.

Special Judge,
Dhemaji.

JUDGMENT

- The prosecution case, in brief, is that on 17-07-2018 complainant-Smt. Sunmoni Changmai lodged an ejahar with Dhemaji Police Station alleging interalia that on 15-07-2018 at about 3.30 PM in the afternoon while her minor daughter Smti 'X' went to the house of accused-Dibya Gogoi, the accused taking advantage of absence of other persons in the house, tried to forcibly commit rape on her by grabbing her, kissed her and touched the private part of the victim grabbed her, and kissed her and she somehow managed to escape from the clutch of the accused and entered into the house of her neighbor Mohan Changmai. It is also alleged in the ejahar that the accused gave Rs.20/- to the victim and warned her not to disclose the fact to any other else, and if she discloses it, then he would kill her by pressing her neck.
- 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 person u/s 354 of the IPC read with Section 8 of 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 charge u/s 354 of IPC against accused-Dibya Gogoi and read-over and explained to him to which the accused 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 his case.

4. <u>Points for determination</u>:

- (1) That on 15-07-2018 at about 3.30 PM at village- No.2 Borachira under Dhemaji Police Satiation you assaulted or used criminal force to Smti 'X', a minor girl aged about 11 years intending to outrage the modesty of said Smti 'X' in your house and thereby you committed an offence punishable u/s **354** of IPC.
- (2) That you, on the same day, time and place, committed sexual assault on Smti 'X', a minor girl aged about 11 years, and thereby you committed an offence punishable u/s 8 of POCSO Act.

Special Judge,
Dhemaji.

5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1 Smt. Sunmoni Changmai** stated that she is the complainant. She knows the accused. Victim Smti 'X' is her daughter. The incident took place about 1 year back. Her daughter used to visit accused's house for tuition class. Accused's elder brother used to give tuition to the victim. On the relevant day of occurrence tutor was absent and his brother/accused was at home and he received her saying that his brother had gone out and he would return soon. While her daughter was sitting at the house of the accused, he talked to her and her daughter got scared thinking that the accused might have bad intention. She ran away from accused's house and told her about the matter and she lodged complaint. Exhibit-1 is the ejahar and EXt-1(1) is her signature.

In cross-examination PW1 stated that the accused is her neighbor. After filing of the ejahar they came to know that accused did not have any bad intention and he did not cause any harm to her daughter. So, she is not willing to proceed against the accused and they are maintaining good relation with the accused.

PW2 is the victim. She stated that the complainant is her mother. She knows the accused. The incident took place about 1 year back. She used to visit accused's house for tution class. Accused's elder brother used to give her tution. On the relevant day of occurrence tutor was absent and his brother/accused was at home and he received her saying that his brother had gone out and he would return soon. While she was sitting at the house of the accused, he talked to her and she herself got scared thinking that the accused might have bad intention. She ran away from accused's house and told her mother about the matter and she (PW1) lodged complain.

In cross-examination PW1 stated that the accused is her neighbor. After filing of the ejahar they came to know that accused did not have any bad intention and he did not cause any harm to her. So, they are not willing to proceed against the accused and they are maintaining good relation with the accused.

Appreciation of evidence:

Special Judge,
Dhemaji.

8. From the discussion of the evidence on record, it appears that in this case the complainant-Smt. Sunmoni Changmai and her daughter-Smti 'X' were examined as P.W-1 and PW2 respectively. Both the P.W-1 and PW-2 have stated that the victim Smti 'X' used to visit the house of the accused for tuition class. Accused's elder brother used to give tuition to the victim. On the relevant day of occurrence tutor was absent and his brother/accused was at home and he received the victim saying that his brother had gone out and he would return soon. While the victim was sitting at the house of the accused, he talked to the victim and the victim got scared thinking that the accused might have bad intention. She ran away from accused's house and told her mother (PW1) about the matter and she (PW-2) lodged complaint.

In cross-examination both PW1 and PW2 have stated that the accused is their neighbor. After filing of the ejahar they came to know that accused did not have any bad intention and he did not cause any harm to the victim. So, they are not willing to proceed against the accused and they are maintaining good relation with the accused.

- 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 offence. This is a case of absence of 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 person. I find that the prosecution has totally failed to prove the charges u/s 354 of IPC read with section-8 of POCSO Act against the accused person.
- 10. In view of the above, I find the accused-**Dibya Gogoi** not guilty u/s 354 of IPC read with Sec. 8 of POCSO Act. Accordingly, accused-Dibya Gogoi is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.
- 12. Given under my hand and seal of this Court on this the 27th day of November/2019.

Special Judge,