IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL POCSO CASE NO. :- 33 of 2018

(Under Section 18 of POCSO Act)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur :Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1. Md. Jainal Abedin

Son of Late Ahmed Ali Resident of Borsola Police Station – Dhekiajuli Dist:- Sonitpur, Assam.

Date of framing Charge :- 20-08-2018.

Date of Recording Evidence :- 06-10-2018

Date of examination of accused u/s : 06-10-2018

313 Cr.P.C

Date of Argument :- 06-10-2018

Date of Judgment :- 06-10-2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- S. Khan, Advocate.

JUDGMENT

- **1.** In this case accused Md. Jainal Abedin is put for trial for allegation of charge u/s 18 of POCSO Act.
- 2. The prosecution case according to the FIR in brief is that on 09-04-2018 at about 5 p.m. informant's minor daughter while returned from her aunt's house accused restrained her and dragged her inside the jungle and forcefully torn her clothes and attempted to commit rape on her. It is also mentioned that the accused who has enlarged on bail connection with Dhekiajuli PS case No. 79/18. On hearing hulla of informant's daughter, his wife Musstt Monuwara Khatoon rushed to the place of occurrence and on being seen her accused person fled away. He could not file the ejahar in time because of his indisposition. Hence, this prosecution case. The informant Md. Ibrahim Ali has filed the ejahar before the O/C of Dhekiajuli Police station on 17-04-2018.
- **3.** On being receipt the ejahar, O/C Dhekiajuli Police Station registered a case being Dhekiajuli P.S. Case No. 291/18 u/s 376/511 of IPC read with section 8 of the POCSO Act. After completion of usual investigation, the O/C Dhekiajuli Police Station sent up the case for trial against the accused Md. Jainal Abedin u/s 376/511 of IPC read with section 8 of the POCSO Act.
- **4.** On being appeared the accused person before this Court, after hearing both parties, framed charge u/s 18 of the POCSO Act against the accused Md. Jainal Abedin. Particulars of the charge were read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined four numbers of witnesses i.e. the complainant, mother of the victim, victim and another material witness. After recording the statement of the aforesaid witnesses, learned counsel for the accused submitted to close the evidence on the ground that the statement of the complainant, victim and other material witnesses no way reveals any materials against the accused as to the alleged offence. Hence, it would be futile to examine

the other witnesses. I have heard the learned Public Prosecutor who also conceded.

- **6.** On close scrutiny of the statement of the witnesses recorded so far, I have come to the conclusion that with the evidence of the said witnesses prosecution case would not develop even if examined the other witnesses.
- **7.** Speedy trial is the right of the accused person. Considering all these aspects, prosecution evidence is closed. Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.
- **8.** I have also heard the argument put forward by the learned counsels of both sides.
- **9.** The points for decision in this case is that -
 - (1) "Whether on or about 5 p.m. of 09-04-2018 at Dhupguri, under Dhekiajuli Police station, the accused attempted to commit any offence punishable under the POCSO Act or to cause such an offence to be committed and in such attempt, does any act towards the commission of the offence, on Miss "X", aged about 16 years , and thereby committed an offence punishable under section 18 of the POCSO Act?

Reasons, Decisions and reason for decision.

- **10.** To arrive at the judicial decision, let me appreciate the evidence on record.
- victim is his daughter, who is aged about 15/16 years. The incident took place about 7/8 months ago in the month of Aghun/Push in the evening time. On the day of incident he was at home. In the evening, his daughter went to the house of her aunt. On return, on the way she saw the accused and being frightened she ran towards home by crying. On asking she told that this accused and another person were standing in the jungle near the road. On being asked she did not state anything against the accused person. Then the filed the ejahar. His daughter gets afraid of

the accused as he was in jail earlier in other case. He does not know the contents of the ejahar. The ejahar was written by one scribe.

In cross-examination he does not know the name of the scribe who has written the ejahar. Accused person resides at a little distance from their house. Quarrel took place in between him and the accused prior to the incident so his daughter was afraid to see the accused on the jungle near the road.

12. PW 2, Monuwara Khatoon, mother of the victim, stated that accused is her neighbour. Victim is her daughter who is aged about 15/16 years. Complainant is her husband. The incident took place about 6/7 months ago in the evening time. On the day of incident she was at home. In the evening, while her daughter returned from her aunty's house, she met the accused and other one person on the road. On being seen them her daughter raised alarm and on hearing her alarm she along with her husband rushed to the place. When she enquired their daughter, she told that out of fear she raised alarm. Her husband filed the case against the accused as in earlier occasion accused was in jail in connection with some other case.

In cross-examination, she admitted that quarrel took place in between them and the accused prior to the incident. On being seen the accused, out of fear her daughter raised alarm.

- **13.** PW 3 Najrul Islam, stated that he knows the accused as well as the victim. He came to know about the incident when he arrived from Kerela. He heard that an incident took place with the daughter of Ibrahim other than that he did not hear anything.
- **14.** PW 4 the victim Miss X, stated that accused is her neighbor. Complainant is her father. The incident took place about 6/7 months ago in the evening time. In the evening when she returned from the house of her aunty, she saw accused Jainal and one Sahar were standing on the side of the road. On being seeing them, she raised alarm. On hearing her alarm her parents along with some local persons visited the place of occurrence. Thereafter, her father informed the matter to the police. The

accused person did not commit any misdeed to her. As there was evening dark so at first she did not recognize the accused persons and therefore, out of fear she raised alarm. After instituting the case, police came, recorded her statement, sent her to the doctor and to the learned court for recording my statement u/s 164 Cr.P.C. Ext. 1 is her statement recorded u/s 164 Cr.P.C. and 1(1) and 1(2) are her signatures.

In cross-examination, she admitted that she mad statement before the learned Magistrate according to the instruction of police.

- **15.** These much is the evidence of the prosecution case.
- **16.** Learned counsel for the accused submitted to acquit the accused as the victim herself did not implicate the accused in any of the alleged offence. She herself stated that on being seen the accused standing near the road side she could not recognize the accused as there was a dark evening and hence she raised alarm and hearing her alarm her parents and other neighbour reached there.
- **17.** I have also heard the learned Public Prosecutor.
- **18.** To prove the charge u/s 18 of the POCSO Act, the prosecution must prove that –

"To convict the accused section 18 of POCSO Act the prosecution must prove that accused attempted to commit any offence punishable under this act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence."

19. In this type of case, the statement of the victim is utmost important. When the victim did not support the prosecution case it would be futile to discuss the statement of other witnesses. It is again stated that PW 4, the victim who stated that at the relevant time while she returned in the evening dark from her aunty's house she could not recognize the accused so out of fear she raised alarm. On hearing her alarm her parents and other neighbour reached there. She clearly stated that accused did not commit any misdeed to her. Under such circumstances, no ingredients of the alleged offence could fulfil in the

statement of the victim. Similarly, other witnesses were also could not implicate the accused in any of the ingredients of the alleged charge.

- **20.** Under such circumstances, I have come to the conclusion that the prosecution has failed to prove the case against the accused Md. Jainal Abedin beyond any reasonable doubt. As such, he is acquitted from the charge u/s 18 of the POCSO Act and set him at liberty forthwith.
- **21.** The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the 6^{th} day of October, 2018.

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Complainant Md. Ibrahim Ali,

2. Prosecution Witness No.2 :- Manowara Khatoon.

3. Prosecution Witness No.3 :- Najrul Islam

4. Prosecution Witness No.4 :- Victim Miss X.

Exhibit.

Exhibit 1 :- 164 Cr.P.C. statement of victim.

(A.K. Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR