# BEFORE THE SPECIAL JUDGE ::::: DHUBRI

## Special Case No.17/2014

U/s.8 of POCSO Act, 2012

### G.R (CPR) 242/2013

### **State of Assam**

- Vs –

Omar Ali

Present : Sri Rajib Goswami, AJS

Special Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.

Sri Y.A. Bepari, Advocate for the defence.

Date of Evidence : 04-04-2015, 29-04-2015, 18-08-2015, 07-12-2015,

11-05-2016 & 17-06-2016

Date of Judgment : 24-06-2016

# JUDGMENT

The prosecution case in brief is that one Tapan Das had lodged a FIR at Chapar P.S. to the effect that on 30-06-2013 at around 1 p.m. his minor daughter and his daughter-in-law Pushpa Das had been to the nearby forest to collect fire woods. The accused Omar Ali with the design to commit rape on the victim had asked Pushpa Das to look for any forest officer coming to the forest and when Pushpa Das was away, the accused caught hold of Sefali Das and gagged her and had committed rape on her. His daughter-in-law when tried to intervene the accused by means of an axe threatened to kill her.

- 2. A case was registered by the O.C, Chapar Police Station U/s. 8 of the POCSO Act, 2012 against the accused. The case was investigated into by the I.O. and after completion of investigation, charge sheet had been filed against the accused Omar Ali u/s.8 of the POCSO Act, 2012.
- 3. Accused person appeared before the Court. The charge u/s.8 of POCSO Act, 2012 had been framed against the accused Omar Ali. Charge had been read over, explained and interpreted to accused to which accused pleaded not guilty and claimed to be tried.

4. The prosecution had examined as many as 8 (eight) witnesses including the I.O. & M.O. Considering there being no incriminating materials against the accused, the necessity to examine the accused generally u/s.313 of Cr.PC. is done away with.

### 5. POINT FOR DETERMINATION

Whether the accused on 30-06-2013 at around 1 p.m. at the village Chagalkuti under Chapar P.S. committed sexual assault on the daughter of the informant who is under the age of 18 years?

### **DECISIONS AND REASONS THEREON**

- 6. PW-1, Tapan Das the informant in the case has not supported the FIR as much as in the cross examination PW-1 disowned having written the FIR or for that matter knowing about the contents of the FIR. PW-2, Smti Pushpa Das was declared hostile by the prosecution.
- 7. Coming to the evidence of PW-7 Dr. (Mrs) Rinku Ahmed, Sr. Medical & Health Officer, Maternity and Health Centre, Dhubri, I find that during her examination of the victim on 26-09-2012, PW-7 did not find any mark of violence on the body of the victim and in her opinion, there was no evidence of rape on the body of the victim. Ext-1 is her report bearing her signature ext-1 (1). According to PW-7 the radiological age of the victim was below 18 years.
- 8. Now having gone through the evidence of Medical Officer, I find that the findings of the MO is consistent with the evidence of the victim, PW-7, who has not uttered a single word against the accused having committed sexual assault on her. The PW-7 attributed the cause for filing the present case is the heated exchange of words between the accused and her sister-in-law since the accused had prevented them from collecting fire woods and she had been present at the scene of occurrence. Thus it is evident that the circumstances surfaced in the evidence of the victim and the findings of the Medical Officer do not point a finger of accusation at the accused. Coming to the evidence of PW-3, Dulal Das, the brother of the victim, PW-4, the mother of the victim, PW-5, a

neighbour of the victim, it has come to light in their evidence that none of these witnesses who are close relatives of victim had in any way implicated the accused of committing sexual assault on the victim. Thus it is evident that the circumstances surfacing in the evidence of PWs do not indicate any sexual assault for the purpose of Section 7 of the POCSO Act to have been committed

9. Thus summing up the discussion of the evidence of witnesses on the prosecution side, it is clear that prosecution has failed to establish the charge u/s.8 of the POCSO Act beyond all reasonable doubt against the

accused. The accused is acquitted and set at liberty forthwith.

10. However, I am inclined to recommend the victim for compensation u/s.357 (A) of Cr.PC. The Secretary, DLSA, Dhubri to assess the quantum of compensation to be paid after due inquiry. The copy of the

judgment be sent to the Secretary, DLSA, Dhubri.

by the accused on the victim, PW-7.

Given under my hand and seal of the Court on this 24<sup>th</sup> day of June, 2016.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.

# **APPENDIX**

#### A. **Prosecution Witness.**

P.W-1 -Sri Tapan Das P.W-2 -Smti Pushpa Das P.W-3 -Sri Dulal Das P.W-4 -Smti Arati Das PW-5 -Md. Manasuddin

PW-6 -Dr. (Mrs.) Muskura Ahmed

PW-7 -Mrs. Shefali Das

SI Sumanta Ch. Barman PW-8 -

#### B. **Court Witness**

Nil

#### C. **Defence Witness**

Nil

#### D. **Prosecution Exhibits.**

Ext-1 -Medical Report Charge sheet. Ext-2 -

# **Defence Exhibit**

Nil

D.

Special Judge, Dhubri