

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
 Special Judge,
 Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 4 (DH)/ 2018.

U/S 4 of POCSO Act.

(G.R. Case No.1125/2017 (DMJ), Dhemaji P.S. Case No.466/2017 Under Section 448/376 of IPC.)

The State of Assam

- Versus -

Shri Mini Das,

S/O Narayan Das,
 R/O Kopohowa Gaon,
 P.S. Dhemaji,
 Dist.- Dhemaji.

.....Accused Person

Special Judge,
 Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri N. Saikia, Advocate

.....For the Accused

Date of prosecution evidence

: 01-09-2018

Date of arguments

: 01-09-2018

Date of Judgment

: 15-09-2018.

JUDGMENT

1. The prosecution case in brief is that on 30-11-2017 complainant- Smti Dharmeswari Das lodged an ejahar with Dhemaji Police Station alleging interalia that on 11-11-2017 at about 3.30 AM at night she and her husband found her daughter-Smti 'X' (name withheld) and accused- Mini Das sleeping together on the bed of her daughter's room. It is stated in the ejahar that on the next day village people gathered and discussed about the occurrence. Then the accused agreed to marry her daughter. Since that day, the accused used to come from his house and stayed with her daughter in their house. Further, it is alleged in the ejahar that the accused told them that he will go to Kerela and will not come back home until he could deposit Rs.1,00,000/- and he went away. Till then the accused did not visit their house.
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-Mini Das u/s 448/376 of IPC R/W section 4 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 charge u/s 4 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 three witnesses. After closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea

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is of total denial. However, the defence adduced no evidence in support of his defence.

4. Point for determination :

(1) That you, on 11-11-2017 at about 3.30 AM at night at Village-Kapahua under Dhemaji Police Station, committed penetrative sexual assault on Smti Lalita Das, a minor girl aged about 17 years 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 Lalita Das stated that complainant is her mother. Accused is at present her husband. The incident took place about one year back. She had love afire with the accused. Both of them had decided to marry. Accordingly, her parents agreed and she started living with the accused as husband and wife. But for some time accused was away from her in Kerala in search of job and her parents were upset and her mother lodged complaint against the accused. Now they are living together as husband and wife. She gave statement before Magistrate on being tutored by her parents.

In cross- examination PW1 stated that as accused and she herself are living together as husband and wife, she prayed before court to acquit the accused so that they can live together peacefully. Her family has also accepted accused as their son-in-law. They have no objection if the accused is acquitted in this case.

7. **PW2** Smti Dharmeswari Das stated that she is the complainant. Accused is at present her son-in-law. The incident took place about one year back. Her daughter had love affairs with the accused. Both of them had decided to marry. Accordingly they got married and they started living as

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husband and wife. But for some time accused was away from her daughter and had gone to Kerala in search of job and as the accused was not in contact, she lodged complaint against the accused. Now they are living as husband and wife.

In cross- examination PW2 stated that as accused and her daughter are living together as husband and wife, she prayed before court to acquit the accused so that they can live together peacefully. They have accepted accused as son-in-law. They have no objection if the accused is acquitted in this case.

8. **PW3** Shri Paban Das stated that complainant is his wife. Accused is at present his son-in-law. The incident took place about one year back. His daughter had love afire with the accused. Both of them had decided to marry. Accordingly they got married and started living as husband and wife. But for some time accused was away from home and had gone to Kerala in search of job and as the accused was not in contact, his wife lodged complaint again- examination PW3 stated that as accused and her daughter are living together as husband and wife, he prayed before court to acquit the accused so that they can live together peacefully. They have accepted accused as son-in-law. They have no objection if the accused gets acquittal order in this case.

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Appreciation of evidence :

9. From the discussion of the evidence on record, it appears that in this case the victim and her parents were examined as P.W-1, PW2 and PW3 respectively. PW1 is the Victim Smti Lalita Das. PWs- 2 is the mother of the victim (PW1) and PW3 is the father of the victim. In their evidence all the three vital witnesses stated that the victim had love affairs with the accused. Victim and the accused decided to marry. Accordingly, they married and started living together as husband and wife. But for some time accused was

away from home in search of a job at Kerala for which the parents of the victim upset and her mother (PW2) lodged complaint against the accused with police. Now, both the accused and victim are living together peacefully as husband and wife. In cross-examination, all the PWs. (P.Ws-1,2 and 3) have stated that as the victim and accused are now living together as husband and wife peacefully, they prayed before the Court to acquit the accused from the charge leveled against him so that they can live a happy and peaceful conjugal life. P.Ws-2 and 3 also stated in cross-examination that they have accepted the accused as their son-in-law. Further, PWs-1,2 and 3 have stated that they have no objection if the case ended in acquittal. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

10. 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 no evidence. I find that the prosecution has totally failed to prove the charge u/s 4 of the POCSO Act against the accused.

11. In view of the above, I find the accused-**Mini Das** not guilty u/s 4 of the POCSO Act. Accordingly, he is acquitted of the charge leveled against him. Set him at liberty forthwith.

12. Judgment is pronounced in open Court.

13. Given under my hand and seal of this Court on this the **15th** day of September/2018.

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(S. Das)
Special Judge,
Dhemaji.