IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 3 of 2017 U/S 10 of POCSO Act. (Arising out of Sonari P.S. Case No. 05/2017)

State of Assam

-Vs-

Sri Haricharan Ghatowar Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, Special P. P. For the accused : Sri D.M. Neog, Advocate (Legal Aid Counsel)

Date of framing Charge : 28.03.2017

Dates of Evidence : 23.05.2017, 19.06.2017, 04.08.2017.

Date of Argument : 04.08.2017 Date of Judgment : 04.08.2017

JUDGMENT

- 1. Prosecution case, in brief, is that on 16.01.2017, one Smt. Mondila Ghatowar lodged an FIR with O/C, Sonari Police Station alleging, inter alia, that on 01.01.2017 in the mid-night hours, her husband, i.e. accused Sri Haricharan Ghatowar committed sexual assault on his own children and on her objection, accused assaulted her. On knowing this incident, villagers became irritated and wanted to physically assault him. However, the VDP members apprehended the accused and handed him over to Sonari P.S.
- 2. On receipt of the FIR, Sonari P.S. Case No. 05/2017 U/S 325/506 IPC, read with Section 10 of POCSO Act, 2012 was registered and investigated

into the case. During investigation, victims were medically examined and statement of the informant Smt. Mondila Ghatowar was recorded in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 352/506 IPC, read with Section 10 of POCSO Act, 2012 against accused person. Accused face the trial as UTP.

- 3. Upon furnishing copy to the accused, vide order dated 28.03.2017, charge U/S 10 of POCSO Act, 2012 was framed and explained to the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined only two witnesses. One of the victim was examined as CW 1.
- 4. Examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material found against the accused for the alleged offence in the evidence of the P.W's already examined.
- I have heard argument of learned special P.P. Mr. A.K. Bora and Mr. D.M. Neog, learned legal aid counsel and gone through the evidence and documents. I have considered the submission of both the sides. I have applied the powers u/s 232 Cr.P.C for disposal of the case without calling the accused to adduced defence evidence.

POINT FOR DETERMINATION IS

6. (i) Whether on 01.01.2017, at midnight hours, accused Haricharan Ghatowar has committed aggravated sexual assault on his minor children?

DECISION AND REASONS THEREOF:

PW-1 Smt. Mondila Ghatowar, wife of the accused and informant of this case, in her evidence deposed that on 01.01.2017, at midnight while she was sleeping with her 5 year old son and 3 year old daughter, her husband, who was also sleeping with them, touched his penis to children's private parts in the name of some ritual. Her husband did so on earlier occasions too. On her objection, accused assaulted her and she had to flee away to her paternal home. On knowing this, villagers physically assaulted her husband and handed

over him to police. She lodged the FIR at Sonari PS. In her cross-examination, she admitted that for new year day, after consuming excessive liquor, her husband was out of control. On that night there was some quarrel with accused for late coming and taking excessive liquor. On this, she left the matrimonial home and went to her paternal home which is near to the house of the accused. She stayed at her paternal home till 16th January. She informed the incident to her parents but local peoples were informed only on 16th January. Her husband was at his residence from 1st to 16th. On insistence by Mahila Samity and VDP, she lodged the FIR. She denied the defence suggestion that at the instigation of others, she lodged false FIR and that accused did not commit any misdeed with his children.

- 8. CW-1 Sri Subham Ghatowar, a Student of Class I and one of the alleged victim of this case, in his evidence deposed that his father Haricharan Ghatowar used to assault his mother and also used to open his pant. His father also behave like a mad man. His father also consumes liquor and some time assaults me.
- 9. PW-2 Sri Dipak Bagh, the VDP President of the area in his evidence deposed that on 16.01.2017, while he was at his house, local public & Mahila Samity apprehended Haricharan and brought to him after assaulting him. He rescued him form public and handed over to Sonari PS. It was reported to him he attempted to molest his minor children. He wrote the FIR under the dictation of Mandila Ghatowar. Exbt. 1 is the FIR. In his cross-examination he admitted that members of Mahila Samity have reported the incident to him.
- 10. From the above evidence on record, it appears that so far the allegation of sexual assault is concerned, though PW 1 has deposed about touching of private parts of two minor children by the accused is concerned, but CW 1, one of the victim, was silent on this aspect. His evidence shows of assault on her mother only and mad behaviour of the accused after consuming liquor. Assault on PW 1 under the influence of excessive liquor was not denied

by the accused. However, no charge was framed on that aspect. The FIR was lodged by the victim wife after 16 days of incident of assault which casts a serious doubt on the genuineness of incident of sexual assault on the particular day. It is also in the evidence that Fir was lodged at the instigation of Mahila Samity.

- 11. Considering all above, I am of the opinion that prosecution has failed to prove the charge U/S 10 of POCSO Act against the accused Haricharan Ghatowar. As such, accused Haricharan Ghatowar is acquitted from the charge U/S 10 of POCSO Act, 2012 and set at liberty forthwith.
- 12. As the accused is in Jail, no order is passed U/S 437 A Cr.P.C. for release of the accused from Jail.
- 13. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357A Cr.P.C.
- 14. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 15. Learned Legal Aid counsel is entitled for his professional fees from DLSA Sivasagar as per rules.
- 16. Judgment is pronounced in open court. The case is disposed on contest.

Given under my hand & Seal of this Court on this the, 4th day of August 2017 at Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. Prosecution witnesses:
 - P.W.1 Smt. Mondila Ghatowar
 - P.W.2 Sri Dipak Bagh.
- 2. <u>Defence witnesses</u> Nil.
- 3. <u>Court witnesses</u> -
 - C.W.1 Sri Subham Ghatowar
- 4. Exhibits by prosecution –

Exbt.1 - FIR

Special Judge, Sivasagar: