IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 11(DH)/ 2017.

U/S 376/511 of IPC R/W Sec.8 of POCSO Act.

The State of Assam

- Versus -

1. Shri Rabi @ Kalak Doley,

S/O Masa Doley

Vill. Bechamara,

P.S. Dhemaji,

.....Accused Person Dist.- Dhemaji.

Appearance:

Shri A. Fogla, Public ProsecutorFor the State

Shri N. Saikia, Advocate

......For the Accused

Date of prosecution evidence

: 29-03-2019.

Date of argument

: 23-04-2019.

Date of Judgment

: 04-05-2019.

JUDGMENT

The prosecution case, in brief, is that on 18-02-2015 1. complainant- Smt. Monumati Gohain lodged an ejahar with Dhemaji Police Station alleging interalia that on 12-02-2015 at 7 AM while her minor daughter Smti 'X' aged about 11 years was alone in their shop situated in

their gate-way, the accused grabbed her inside the shop and pressed her breast and he then made her senseless. It is also alleged in the ejahar that the accused gave her a ten rupee note and asked her not to disclose the fact to anybody else. Hearing the cries of her daughter, her husband came out from the house and tried to apprehend him. Then the accused fled away.

- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused person u/s 376/511 of IPC R/W Sec. 8 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 charges u/s 376/511 of IPC R/W Sec. 8 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 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 their case.

4. Point for determination:

- (1) That you, on 12-02-2015 at about & AM in the morning at Village –Raipur Ghuguha under Dhemaji Police Station, attempted to commit rape on Smti 'X', a minor girl aged about 11 years, and thereby you committed an offence punishable u/s 376/511 of IPC.
- (3) That you, on the same day, time and place you committed sexual assault on Smti 'X', a minor girl aged about 11 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** Smt. 'X' (victim girl) stated the complainant is her mother. She knows the accused. The incident took place in the year 2015. There is a shop adjacent to their house. Accused came to the shop and she also came there to buy articles. While she was at the shop the accused was looking at her indecent manner and she sensed foul play and then she left the place. She told her mother about the accused being indecent to her and then her mother lodged complaint. Police recorded her statement and also got her medically examined.

In cross-examination PW2 stated that she has no objection if the accused is acquitted in this case.

7. **PW2** Smt. Monumati Buragohain stated that she is the complainant. She knows the accused. Victim 'X' is her daughter. The incident took place in the year 2015. There is a shop adjacent to their house. The accused came to the shop and her daughter (victim) also came there to buy articles. While she was at the shop the accused was looking at her indecent manner and she sensed foul play and then she left the place. She (victim) told her about the accused being indecent to her and then she lodged complaint. Exhibit-1 is the ejahar and Exhibit-1(1) is her signature.

In cross-examination PW2 stated that she has no objection if the accused is acquitted in this case.

Appreciation of evidence :

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Monumati Buragohain were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that there is a shop adjacent to their house. The accused came to the shop and the victim (PW1) also came there to buy articles. While she (victim) was at the shop the accused was looking at her indecent manner and she sensed foul play and then she left the place. She (victim) told her

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mother (PW2) about the accused being indecent to her and then she lodged complaint at the police station. In cross-examination, both PW1 and PW2 stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 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 offences. This is a case of no 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. I find that the prosecution has totally failed to prove the charges u/s 376/511 of IPC read with Sec.- 8 of the POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Rabi** @ **Kalak Doley** not guilty u/s 376/511 of the I.P.C. read with Section-8 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.
- 12. Given under my hand and seal of this Court on this the 4th day of May/2019.

(S. Das)