IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.34/2018

State of Assam

Versus

Ekabbar Ali Sk @ Hazrat Ali Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr A.S. Talukdar

Evidence recorded on : 04.02.2019 and 16.3.2019

Argument heard on : 16.3.2019

Judgment delivered on: 16.3.2019

JUDGEMENT

1. The prosecution story in brief is that on 16.7.2018 the informant Md Maharuddin Khan lodged the first information report to the effect that on 11.7.2018 at about 7.30 P.M. the accused Md Ekabbar Ali caused sexual harassment to the minor daughter of the informant and outraged her modesty taking her at the back side of the house of the accused. Hence, the first information report.

- 2. On receipt of the first information report in Gossaigaon Police Station a case has been registered under Gossaigaon P.S. case No.275/2018 under sections 354(A)/506 of IPC, R.W. section 8 of POCSO Act and the case was endorsed to the S.I. R.L. Das for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses including the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 354 (A)/506 of IPC, read with section 8 POCSO Act against the accused Ekabbar Ali Sk. Relevant copies accordingly furnished to the accused by this court and the charge under section 4 of POCSO Act was framed against the accused finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Accused also granted bail after a considerable period in jail hazot.
- 3. The prosecution side examined as many as 03 (three) number of witnesses including the informant and the victim as follows:-

PW 1 Md Maharuddin Khan (Informant),

PW 2 Musstt Munni Khatoon (Victim),

PW 3 Mosstt Nehula Bibi.

- 4. The accused person did not examine any witness in support of his case and took the plea of total denial while recording his statement under section 313 of Cr.P.C.
- 5. **Point for determination:**

Whether the accused committed the offence of penetrative sexual assault to the minor victim ?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, Informant of this case deposed that at the time of incident he was in Arunachal Pradesh. After receipt of telephone call from his house, when he came to his house heard that on the day of incident accused Ekabbar was watching T.V. along with his daughter Munni and when current had gone accused asked his daughter to bring betel nut and when his daughter returned back accused took her on his lap on which there was hulla.
- 8. PW2, mother of the victim of this case deposed that when she was preparing food she heard sound of crying of her daughter and when she came out from the house she saw the accused was carrying her daughter on his lap and when her daughter came near to her she asked as to why she was carrying the she reported that the accused asked her to bring betel nut and out of fear she cried. In cross she stated that she has no objection if the accused is acquitted from this case.
- 9. PW3, Victim of this case deposed that she visited to the house of accused to watch T.V. where her uncle asked her to bring betel nut and when she returned with betel nut and gave betel nut to her uncle, (accused) he took her on his lap and out of fear she cried. In cross she stated that she cried only out of fear of the accused.
- 10. From the discussion of testimonies of the prosecution witnesses it is seen that there is no allegation of any penetrative sexual assault to the minor victim nor there is any material of sexual assault to fulfill the ingredient of section 8 of POCSO Act. The victim cried only when the accused took her on his lap suddenly.

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- 11. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Ekabbar Ali Sk. under section 4 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.
- 12. The judgment is delivered in the open court and given under my hand and seal of the court on this 16th March/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar