## IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District:	Kamrup,	Amingaon
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Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.57/2018

U/S- 4 of POCSO Act, 2012

State of Assam

-Versus-

Sri Mridul Das

s/o-Sri Dhananjoy Das

Resident of vill –Bagta (Gosaibari)

P.S.-Hajo

Dist- Kamrup, Assam

-----Accused

## Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State

Jeherul Islam, Advocate ------for the accused

Date of evidence: 13.12.2018, 14.12.2018

Date of Argument:15.12.2018

Date of Judgment:15.12.2018

#### **JUDGMENT**

- 1. The Prosecution case, briefly narrating is that on 23.10.2016 at about 3.00 p.m the complainant Smti. Bijumani Das lodged an ejahar alleging that on that day the accused person—Sri Mridul Das had committed penetrative sexual assault upon her minor daughter while she was playing. Hence, this case.
- On the basis of the said ejahar, Hajo P.S Case No. 818/16 U/S- 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 4 of the POCSO Act, 2012 against accused— Sri Mridul Das. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined three witnesses including the the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

#### 5. POINT FOR DETERMINATION

(I) Whether the accused person on 23.10.2016 at about 3.00 p.m committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined the informant and victim of this case.
- 7. P.W.1, is the prosecutrix. She stated that informant of this case is her mother. She knows the accused person—Mridul Das, who is her neighbour. P.W.1 stated that the

incident occurred 2/3 years ago when she was 7 years old at that time. She further reveals that while she was playing in nearby field with her friends on the relevant evening, then she slipped and fell down on the ground. Accused was also playing with them. Then, the accused came to rescue her. The accused picked her up from the ground by catching hold of her hand. But she got frightened and came home running. Later, her mother heard the incident from one of her friend-Bishal. Thereafter, her mother lodged the ejahar. Police took her for her medical examination and brought her before the Magistrate for recording her statement. P.W.1 further revealed that she gave her statement as tutored by her mother. Ext. 1 is the statement. Ext. 1 (1) is my signature.

- 8. In her cross-examination she disclosed that the accused did not do anything with her on the date of occurrence.
- 9. P.W.2, Smti. Bijumoni Das deposed in her evidence that she is the informant of this case. Prosecutrix is her daughter. She knows the accused person—Mridul Das. He is her neighbour. P.W.2 stated that the incident occurred about 2/3 years ago at 3-4 p.m. Prosecutrix was 7 years old at that time. At the relevant time of incident, she was inside her house. Prosecutrix was playing in nearby field with her friends that evening. Then, one of her friend-Bishal came home running and told her that accused was doing something with her daughter. Thereafter, she got angry and lodged the ejahar against the accused person. She further stated that ejahar was written by some other person. Ext. 2 is the ejahar. Ext. 2 (1) is her signature. P.W.2 disclosed that later she came to hear from her daughter that she had slipped and fell down while playing. Accused was also playing with them. Then the accused picked her up from the ground by catching hold of her hand. But, her daughter got frightened.
- 10. In her cross-examination P.W.2 disclosed that accused did not do anything with the prosecutrix on the date of occurrence. She gave her statement before the Magistrate as tutored by her.
- 11. P.W.3, Sri Biren Das deposed in his evidence that informant of this case is his wife. Prosecutrix is his daughter. He knows the accused person—Mridul Das. P.W.3 stated that when he was doing his duty in Mirza, then his wife—Bijumoni informed him that the accused did some bad acts with the prosecutrix. And also told him that some

- other person told her about the incident. And out of anger he asked his wife to lodge the ejahar. P.W.3 also stated that Prosecutrix was 7 years old at that time.
- 12. In his cross-examination P.W.3 disclosed that he heard from his daughter (prosecutrix) after some days of the incident that the accused did not do anything with her. She had slipped while she was playing in the field and the accused had picked her up. But, she got frightened and one of her friend informed his wife about the incident.
- 13. I have heard the arguments of both the sides. Perused the evidences on record.
- 14. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 15. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
  - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
    - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
    - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
    - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
    - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 16. Now, in this instant case, there is no allegation by the prosecutrix of any penetrative sexual assault or any kind of sexual assault upon her by the accused person. The

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prosecutrix (P.W.1) made it clear in her evidence that the accused did not commit

any penetrative sexual assault on her on the date of occurrence. No incident as

alleged in the ejahar took place. Prosecutrix (P.W.1) made it clear that while she was

playing in nearby field with her friends, then she slipped and fell down on the

ground. Accused was also playing with them. Then, the accused picked her up from

the ground by catching hold of her hand. But she got frightened and came home

running. The victim implicated the accused in her statement U/S-164 Cr. P. C as

tutored by her mother. Other P.Ws also supported the version of P.W.1. So, the

offence U/S- 4 of the POCSO Act is not at all attracted in this instant case.

17. In the result, the prosecution has miserably failed to prove the case beyond

all reasonable doubt against the accused person. Accordingly, the accused—Mridul

Das is held not guilty and he is acquitted of the offence U/S- 4 of the POCSO Act,

2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged

from his liabilities.

18. The case is disposed of.

19. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 15<sup>th</sup> day of December, 2018.

Special Judge,

Kamrup, Amingaon

# **APPENDIX**

# **Prosecution Witness:**

P.W.1, Prosecutrix

P.W.2, Smti. Bijumoni Das

P.W.3, Sri Biren Das

# **Prosecution Exhibit**

Ext.1 is the statement of the Prosecutrix U/S—164 Cr. P.C.

Ext.2 is the ejahar.

Special Judge, Kamrup, Amingaon