IN THE COURT OF ADDITIONAL SESSIONS JUDGE...... BIJNI.

Present: N.U. Ahmed.

Special Judge,

Bijni.

Special(P) case No.44/2018 Under section 8 of the POCSO Act.

THE STATE OF ASSAM

-VS -

Shri Narayan Mandal ..... Accused.

#### APPEARANCE:

Advocate for the prosecution

Mr. P. Dev Ray, Ld. Addl. P.P.

Advocate for the defence

Mr. N. K. Ghosh, Ld. Advocate.

**B**ate of charge

: 11-03-19

Date of evidence

: 04-05-19 and 14-05-19.

Date of recording statement of accused: 21-05-2019

Date of Argument

: 21-05-19

Date of Judgment

: 21-05-19.

#### JUDGMENT

- The prosecution case, in brief, is that on 27-02-2018, informant Sri Bimal Das 1. lodged an FIR with the O. C. Bijni P. S. alleging inter alia that on 21-08-2018 at about 7-30 PM while he and his wife were not at home and his 14 years old daughter "X" (name withheld, here in after known as "X") was alone in his house, then accused Narayan Mandal entered into his house and touched the body of his daughter and tried to commit sexual assault on her. Hence, the present case.
- On receipt of the FIR, O/C Bijni P. S. registered the same as Bijnii P.S Case No. 2. 262/18, U/S 8 of the Protection of Children from Sexual Offences Act, 2012 and started investigation. During investigation I. O. visited the place of occurrence, recorded the statement of witnesses, recorded the statement of vict under section 164 of the Cr. P. C. Judicial Magistrate and after completion of investigation I.O. submitted charge sheet against the accused Sri Narayan Mandal under section 8 of the Protection of Children from

Sexual Offences Act, 2012 (in short here in after called as POCSO Act)

- 3. After receiving the charge sheet cognizance was taken u/s 8 of the Protection of Children from Sexual Offences Act, 2012, against the accused Sri Narayan Mandal and started a Special(P) case. Copy of the relevant documents were furnished to the accused person as per provision of section 207 of the Cr. P. C. After hearing both the sides learned Advocate and on perusal of case record charge was framed u/s 8 of the POCSO, Act, 2012 and the contents of charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial prosecution side examined as many as 5 witnesses including informant and victim. Accused was examined u/s 313 of Cr. P. C. and recorded his statement in separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.
- 5. I have heard argument put forwarded by learned advocate of both sides. I have gone through the case record as well as evidence on record.

## **POINT FOT DETERMINATION**

6. (i) Whether accused on 21-08-18 at about 7-30 PM at village- Patgoan Bhatipara under Bijni P. S. committed sexual assault on "X"( a minor girl of 14 years) and thereby committed an offence punishable u/s 8 of the POCSO Act.?

# :DISCUSSION, DECISION AND REASON THEREOF:

- 7. To bring home the charges the prosecution examined five witnesses including the informant and victim. Let me scrutinize the evidence on record to decide the points.
- 8. PW1 "X" is the victim of the case. PW1 in her deposition stated that her age is 18 years. She further deposed that about one month ago one day afternoon her mother went to the house of accused to prepare curry for birth day party and she went to road. Then accused Narayan Mandal asked her whether she would go to birthday party or not. The villager saw them and asked her father to file the case and accordingly her father filed this case. After filing the case police brought her in the court and her statement was recorded by Magistrate. She proved her statement as exhibit-1 and exhibit-1(1) and \$\frac{1}{2}\$



are her signatures. During cross-examination she stated that public forced her father to file this case and accused has not committed anything with her. She made statement before Magistrate on the instruction of public.

- 9. PW2 Sri Bimal Das is the informant of the case. PW1 in his deposition has deposed that about two months ago one day he came home from his work place and his daughter reported him that accused told something to her. Thereafter, villager forced him to file this case and accordingly he filed this case. During cross examination he stated that public saw that his daughter and accused were talking and public suspected them and forced him to file this case.
- 10. PW3 Smt. Minati Das is the mother of the victim "X". PW3 in her deposition has deposed that about one year ago one day she went to the house of accused to prepare food for the birthday party. While her daughter was standing on the road then accused asked her to go to the birthday party. Public saw their talking and suspected them and surred her husband to file the case. Accordingly her husband filed this case. She further stated that at the time of occurrence age of her daughter was 17 years. During cross-amination she stated that accused do nothing with her daughter. At the time of occurrence age of her daughter may be above 18 years and she stated age of her daughter on assumption.
- 11. PW4 Sri Amulya Das in his deposition has deposed that he about 6/7 months ago heard that his brother-in-law filed a rape case against the accused. PW5 Sri Basudev Das also in his deposition has deposed that he heard that accused entered into the house of informant and tried to commit sexual assault on the victim "X".
- 12. From the evidence on record it reveals that while victim girl and accused were talking on the road then public saw them and suspected them and public forced the informant to file this case. PW1 in her deposition clearly stated that accused has not committed any misdeed with her. Though the informant in the FIR stated that accused entered into his house and tried to commit sexual assault on PW1, but during his evidence he stated that accused has not committed anything with her daughter. Though the victim in her statement u/s 164 of the Cr. P. C stated that accused entered into her house and touched her body and tried to sexual assault on her, but during her evidence she stated that accused has not committed anything with her. Hence, I find that there is no consistency in the evidence of PW1 and PW2. So, I find that prosecution case is doubtful. Hence, I have nothing to hesitate to hold that prosecution failed to prove this case against

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the accused beyond reasonable doubt. Therefore, I find that prosecution failed to bring home the charge u/s 8 of the POCSO Act against the accused person beyond all reasonable doubt.

- 13. From the discussion made above, I find that the prosecution side failed to prove the charges against the accused person beyond all reasonable doubt. Hence, accused Sri Narayan Mandal is found not guilty under section 8 of the Protection of Children from Sexual Offences Act, 2012 and he is acquitted from the charge and set him free at his liberty forthwith.
- 14. Send a copy of the judgment and order to the District Magistrate, Chirang as per provision of section 365 of the Cr. P. C.
- 15. Considering the fact and circumstance of the case, I find that this is not a fit case to recommend the DLSA, Chirang for victim compensation u/s 357-A Cr. P. C.

Given under my hand & seal of this court the 21st day of May, 20 f.9.

Additional Special Judge,

Type by myself.
Additios respectial Judge,



## **APPENDIX**

(A) Prosecution witnesses:

PW1- Victim "X"

PW2- Shri Bimal Das

PW3- Smt. Minati Das

PW4- Sri Amulya Das

PW5- Sri Busudev Das

(B) Prosecution exhibit-

Ext.1- statement of victim girl u/s 164 of the Cr. P. C.

- (C) Defence witnesses- Nil.
- (D) Defence exhibit- Nil.



