### **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.01/2018

U/S- 4 of POCSO Act, 2012

State of Assam

-Versus-

Md. Arman Ali

s/o-Lt. Unash Ali

Resident of vill -Badla Pathar

P.S.-Nagarbera

Dist- Kamrup, Assam

-----Accused

Appearance:

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

Abdul Rohim, Ld. Advocate ------for the accused

Date of evidence: 30.11.2018, 15.02.2019

Date of Argument: 18.02.2019

Date of Judgment: 18.02.2019

#### **JUDGMENT**

- The Prosecution case, briefly narrating is that on 17.04.2016 the complainant

   Md. Manowar Hussain lodged an ejahar alleging that on that evening, the accused person— Arman Ali took away his minor daughter nearby paddy field when she was returning from tuition and taking advantage of her loneliness, he committed penetrative sexual assault upon her. Hence, this case.
- 2. On the basis of the said ejahar, Nagarbera P.S Case No. 40/16 U/S- 4/8 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- 4/8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 4 of the POCSO Act, 2012 against accused— Arman Ali. 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 5 ( five ) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating material against him.

### 5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 17.04.2016 at evening at village—Badlapathar under Nagarbera P.S 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 evidences on record. Heard Ld. Counsels for both the sides.
- 7. P.W.1, Md. Monowar Hussain is the informant. He has deposed in his evidence that he knows the accused person. The incident took place about 2 years ago at about

6.30/7.00 p.m. Prosecutrix is his daughter. She was 11 years old at the time of occurrence. P.W.1 disclosed that at the relevant time, prosecutrix was coming home after attending her tuition classes in the house of his elder sister—Mamtaz Begum and her daughter was also taking the same tuition. As it was dark, so her tuition master (accused) of prosecutrix accompanied her. They were coming through the paddy field. Suddenly, she slipped and fell down on the paddy field. Then, the accused caught her hand and picked her up. But she got frightened and she came home running in high speed. Then, she again fell down in the courtyard. P.W.1 was not present at the time of occurrence. Later, when he returned home his wife—Falani Khatun told the incident. Thereafter, he lodged the ejahar. Ext.1 is the ejahar. Ext. 1 (1) is his signature. Police recorded his statement. Ext.2 is the seizure list. Ext. 2 (1) is his signature.

- 8. In his cross-Examination P.W.1 revealed that he did not write the ejahar by himself. He does not know what is written in the ejahar. It was raining on the day of occurrence and the road was slippery. P.W.1 revealed that when he enquired about the incident from the prosecutrix, she told him that accused did not do any bad acts with her.
- 9. Pw-2, is the prosecutrix. She deposed in her evidence that the informant of this case is her father. She knows the accused person. The incident took place about 2 years ago at about 6.30/7.00 p.m. She was 11 years old at the time of occurrence. At the relevant time, she was coming home after attending her tuition classes in the house of her Aunt—Mamtaz Begum and her daughter was also taking the same tuition. As it was dark, so her tuition master (accused) accompanied her to her house. They were coming through the paddy field. Suddenly, she slipped and fell down on the paddy field. Then, the accused caught her hand and picked her up. But she got very frightened and she came home running in high speed. Then, again she fell down in the courtyard. She told the incident to her mother. Thereafter, her mother told her father about the incident and her father lodged the ejahar. Police recorded her statement. Police sent her for her medical examination and brought her before the Magistrate for recording her statement. Ext.3 is her statement.
- 10. In her cross-examination she revealed that she does not know what is written in the ejahar. Accused did not do any bad acts with her. She gave her statement as tutored by her village people.

- 11. Pw-3, is Mamtaz Begum. She has deposed in her evidence that she knows the informant and prosecutrix of this case. Prosecutrix is her niece. She also knows the accused person. The incident took place about three years ago at about 4.00 p.m. Prosecutrix was 9 years old at the time of incident. On the relevant date, prosecutrix had come to her house to attend tuition. It was raining in the evening. So, she could leave the house only at 6.00 p.m. with the accused, who was her tuition master. Later, she heard from the informant that on the way, she slipped and she came home running. Police recorded her statement. In her cross-examination she revealed that she did not hear any bad act done by the accused.
- 12. Pw-4, Musstt. Falani Khatun has deposed in her evidence that informant of this case is her husband. Prosecutrix is her daughter. She also know the accused person. The incident took place about three years ago at about 6.00 p.m. On the relevant date, prosecutrix had gone to the house of her Aunt to attend tuition from the tuition master (accused). It was raining that evening. She came home running and fell down in front of our house. Later, she came to know about the incident from the prosecutrix that while coming home, she slipped and fell down on the field and lost her senses. The accused was also accompanying her. The accused pulled her by the hand and picked her up. But out of fear, she ran and came home. Again, she fell in front of the house. Thereafter, P.W.4 informed her husband. Her husband came home and on hearing the incident, he lodged the ejahar.
- 13. In her cross-Examination, she revealed that she do not know about the allegations given by her husband in the ejahar. And she did not hear any bad act done by the accused on the prosecutrix.
- 14. P.W.5, Mominul Hoque has deposed in his evidence that he know the Informant and prosecutrix of this case. He also know the accused person. The incident took place about 1 ½ years ago. Prosecutrix was studying in class- VI. On the next day of the incident, the informant called him and told him that on the relevant date, prosecutrix had gone to attend tuition from the accused. But while she returning home, she slipped and came home running. The accused was also accompanying her.
- 15. I have heard the arguments of both the sides. Perused the evidences on record.

- 16. **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."
- 17. **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.
- 18. 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 prosecutrix (P.W.2) made it clear in her evidence that the accused did not commit any penetrative sexual assault on her on the date of occurrence. She revealed that while she was coming home after attending her tuition classes from the accused in the house of her Aunt—Mamtaz Begum, she slipped and fell down on the paddy field. Then, the accused caught his hand and picked her up. But she got very frightened and she came home running in high speed. She further revealed in her cross-examination that accused did not do any bad acts with her and she gave her statement before the Magistrate as tutored by her village people. P.W.1 and P.W.4 also made it clear that on the relevant night, while she was coming home from tuition, she slipped and fell down on the field and lost her senses. The accused, who

Page **6** of **7** 

was also accompanying her, pulled her by the hand and picked her up. But out of

fear, she ran and came home. Other witnesses also supported the version of P.W.1,

P.W.2 and P.W.4. Therefore, it has come out clearly that no incident of penetrative

sexual assault took place with the victim. Thus, the offence U/S- 4 of the POCSO Act

is not at all attracted in this instant case.

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

beyond all reasonable doubt against the accused person. Accordingly, the accused

Arman Ali is held not guilty. 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.

20. The case is disposed of.

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

Given under my hand and seal of this Court on this 18<sup>th</sup> day of February, 2019.

Special Judge, Kamrup, Amingaon

# **APPENDIX**

# **Prosecution Witness:**

P.W.1, Md. Monowar Hussain

Pw-2, is the prosecutrix

Pw-3, is Mamtaz Begum

Pw-4, Mrs. Falani Khatun

P.W.5, Mominul Hoque

## **Prosecution Exhibit**

Ext.1 is the ejahar.

Ext.2 is the seizure list.

Ext-3 is the statement of the prosecutrix U/S-164 Cr. P.C

Special Judge, Kamrup, Amingaon