IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

Present : Smti. S. Bora,

Special Judge, Udalguri.

Reference : **Special (POCSO) Case No. 2/2017.**

Complainant : State

Vs

Accused : Sri Khargeswar Mantra

Charges: U/S 10 of POCSO Act.

Dates of hearing : 27.3.2018

Date of Judgment : 27.3.2018.

For the State : Mr. P. Baskey, Public Prosecutor.

For the accused : Mr. S. Sarma, Advocate.

JUDGMENT

In this case accused Khargeswar Mantra put for trial for allegation of charge U/S 10 of POCSO Act.

- 2. The various fact leading to institution of this case, according to FIR, in brief, is that on 2.10.16 the accused committed rape on his daughter aged about 6 years. Hence this prosecution case.
- 3. The FIR was filed by informant, Pinki Mantra before the O/C, Harisinga PS. On receipt the ejahar the O/C, Harisinga P.S. registered the case vide Harisinga P.S. case No. 62/16 U/S 4 of POCSO Act. After completion of usual investigation the O/C, Harisinga P.S. sent up the case for trial against the accused persons U/S 10 of POCSO Act.

- 4. On being production of the accused persons before this court after hearing both parties charge framed U/S 10 of POCSO Act. Particulars of the charge is read over and explained to the accused, to which he pleaded not guilty and claims to be tried.
- 5. To substantiate the case, prosecution examined as many as two witnesses which include the informant and the victim. Ld. Counsel for prosecution submitted to close the evidence as the statement of informant and victim, who are the vital witness in this case stated nothing about the incident. So it would be futile to summon the other witnesses.

On close scrutiny of the record including the statement of witnesses recorded so far, I think prosecution case would not develop even if examine the other remaining witnesses.

It has been held in S. Rama Reddy Vs. R. Ramy Reddy, reported in AIR (SC) (2008) 2006 that speedy trial is the fundamental right of the accused person.

Considering the aforesaid view coupled with the aforesaid mandate of the Hon'ble Apex Court, prosecution evidence is closed.

Examination of accused person U/S 313 Cr.P.C. is dispensed with.

6. I have also heard argument put forward by ld. Counsel for both sides.

POINTS FOR DETERMINATION

7. The point for decision in this case is-

Whether the accused on 2.10.16 at about 3 PM at Majuli TE under Harisinga PS committed aggravated sexual assault upon Miss Hema Guriya @ Hema Mantra, aged about 6 years?

DECISIONS, DISCUSONS AND REASONS FOR DECISION

- 8. To arrive at a judicial decision, let me appreciate the evidence on record.
- 9. PW1, Miss Hema Mantra, who is the victim of this case deposed that she does not know about the incident. Her father did nothing to her.
- 10. PW.2, Smti. Pinki Mantra, who is the informant and mother of the victim deposed that victim is her daughter and accused is her husband. On the date of incident her daughter cried. On hearing hue and cry the people of garden came and they forced her to lodge ejahar against her husband. No incident of sexual assault was committed by her husband. She lodged the ejahar. She put her thumb impression in the ejahar.

In cross-examination this witness stated that she does not know about the contention of the ejahar. Ejahar was written by another person. She does not want to proceed with the case against her husband.

- 11. These much is the evidence of prosecution.
- 12. In this case, as discussed above, the PW1, who is the victim of this case stated clearly that accused did nothing with her. Similarly, PW2, informant cum mother of the victim stated that on the date of incident her daughter cried. On hearing hue and cry the people of garden came and they forced her to lodge ejahar against her husband. No incident of sexual assault was committed by her husband. There is no any iota of evidence to show that accused committed the crime. Even there is no any circumstance to infer the accused in the alleged charge.

13. As such, I have, therefore, no hesitation to hold that accused is entitled to get benefit of doubt. As such, acquit him and set at liberty forthwith.

Given under my hand and seal of this court on this the 27^{th} day of March, 2018 at Udalguri Court.

(S. Bora) Special Judge, <u>Udalguri, BTAD</u>.

Dictated and corrected by me and each page bears by signature.

(S.Bora) Special Judge, <u>Udalguri, BTAD</u>.