IN THE COURT OF THE SPECIAL JUDGE AT JORHAT

Present: Sri Madhurjya Narayan, AJS

Special Judge, Jorhat

SPECIAL CASE NO. 35 OF 2018 (G.R. Case No. 1265 of 2018) Jorhat P.S. Case No. 949 of 2018

State of Assam

-Versus-

Sri Ashim Dutta, Son of Sri Ananta Dutta, Resident of Garmur, P.S. Jorhat,

District-Jorhat. Accused

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Smt. Pragati Bordoloi, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 02-07-2018

Date of prosecution evidence: 01-08-2018; 10-10-2018 & 07-12-2018

Statement of Accused

Recorded on : 25-07-2019

Date of Argument : 28-08-2019

Date of Judgment : 11-09-2019

<u>JUDGMENT</u>

- The prosecution case, in brief, is that on 29/04/2018, informant Sri Ratul Hazarika, lodged a written ejahar with Jorhat Police Station, thereby stating inter-alia, that since many days, his daughter [hereinafter referred as (X) in order to screen her identity], by maintaining love relation with accused Sri Ashim Dutta, has been indulged in immoral acts. People of the locality have raised objection against such immoral acts and also torturing them for such acts. It needs to be noted that in the ejahar [Exhibit-1], both accused Sri Ashim Dutta and the victim [X], have been named as accused.
- **2).** On receipt of the aforesaid F.I.R. by the Officer-in-charge, Jorhat P.S., the same was registered as Jorhat P.S. Case No. 949/2018 under Section 4 of The Protection of Children From Sexual Offences Act, 2012. The Officer-in-charge, Jorhat P.S. entrusted S.I. Smt. Arpana Baruah to take up investigation of the case.
- **2 (1)** During the course of investigation, the I.O. visited the place of occurrence, prepared Sketch Map of the same, recorded statements of the witnesses and forwarded the accused Sri Ashim Dutta after arresting him. She also got the statements of the victim recorded in the Court under Section 164 of Cr.P.C. Then on completion of investigation, the I.O. laid charge-sheet against accused Sri Ashim Dutta to stand trial in the Court under Section 4 of The Protection of Children From Sexual Offences Act, 2012 [in short, POCSO Act, 2012].
- **3).** On production of the accused person before this Court, my learned predecessor-in-court, after furnishing the copies of relevant documents and upon hearing the learned counsel for both sides on the point of consideration of charge and perusing the relevant materials, finding a prima-facie case under Section 4 of POCSO Act, 2012, framed formal charge there under against the

accused person. Particulars of accusations of above charge on being read over and explained to the accused, he pleaded not guilty and claimed to be tried.

- **4).** To bring home the charge, the prosecution examined as many as **06 [six]** witnesses including the victim, her parents including her father who is the informant of the case. Further, the prosecution side exhibited the statement of the victim [X] recorded under Section 164 of Cr.P.C. as Exhibit-1, the ejahar as Exhibit-2, the statement of the informant Sri Ratul Hazarika recorded under Section 164 of Cr.P.C. as Exhibit-3, seizure-list as Exhibit-4 and Zimmanama as Exhibit-5.
- on closure of the prosecution evidence, statement of the above named accused was recorded under Section 313 of Cr.P.C. No defence evidence was led in the instant case.
- 6). I have heard arguments advanced by the learned counsel for both sides. I have also scrutinized the entire evidence of witnesses as well as all relevant materials, including the exhibits on record.

7). POINT FOR DETERMINATION:-

Whether the accused person on or about several days prior to the filing of the ejahar on 29/04/2018, at Chakihat, under Jorhat P.S., committed penetrative sexual assault upon the daughter of the informant, i.e., victim [X]?

DISCUSSION, DECISIONS AND REASONS THEREOF:

8). PW-1/victim 'X' deposed that on the day of the incident she had an altercation with her mother over food. That her father became angry on her, and thereafter, in a fit of rage, she called the accused person over phone, on which her father became more angry. That then some women came to their house and took away two mobile phones from her hand and also took her out of her house.

That she stayed outside her house for more than an hour and after that went inside. That her mother, on pretext of going to the house of the accused person, took her to the police station where she found the women, who had come to her house.

- **8 (i).** During cross-examination, PW-1 stated that her family and the family members of the accused person have good relation. That both families knew that they loved each other. That a discussion has been going on between the families for their marriage. In answer to the court, PW-1 stated that they did not have physical relation and the accused person, did not touch her body.
- **9). PW-2/Smt. Niru Hazarika** is the mother of victim/PW-1. She deposed that victim had some altercation with the accused person over telephone and she tried to make her understand. That the victim became angry because of which, her husband also became angry.
- **10). PW-3/Sri Ratul Hazarika** is the **informant** and father of the victim/PW-1. He deposed that he had been told by the neighbours that accused person indulged in sexual activities with his daughter/PW-1 as they had love affairs.
- **10 (i).** During cross-examination, PW-3 stated that the victim did not tell him that the accused person had physical relation with her. That they are having cordial relations presently and he had lodged the case as told by others.
- **11). PW-4/Sri Babul Hazarika** deposed that he came to know that the accused person and the victim/PW-1 had love affairs. That he did not ask the victim about the incident.
- 12). PW-5/Smt. Aruna Dutta and PW-6/Smt. Mira Baruah deposed that they knew that the accused person was having love affairs with the

victim/PW-1. That they are not aware why the case has been lodged against the accused person.

- **13).** The evidence on record as discussed aforesaid, failed to make out any case against the accused person. The victim/PW-1, who is on the verge of attaining majority, also did not implicate the accused Sri Ashim Dutta. Accordingly, he is entitled to acquittal and be set at liberty.
- **14).** Accused is on bail. The bail bond of accused is extended for another **06 [six]** months from today as per provision of Section 437-A Cr.P.C.
- **15).** Given under my hand and seal of this Court on this **11th** day of **September 2019**.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Niru Hazarika, mother of the victim.
PW-3	Sri Ratul Hazarika, father of the victim-cum-
	informant of the case.
PW-4	Sri Babul Hazarika, tempo driver.
PW-5	Smt. Aruna Dutta, housewife.
PW-6	Smt. Mira Baruah, government employee.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of the victim/PW-1 under Section 164 Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Statement of PW-3/Sri Ratul Hazarika under
	Section 164 Cr.P.C.
Exhibit-4	Seizure-list
Exhibit-5	Zimmanama

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)