IN THE COURT OF THE DISTRICT & SESSIONS JUDGE CUM SPECIAL JUDGE-2 (FTC) (POCSO) :: :: TINSUKIA

District: Tinsukia

Present: Md. A. Hakim,

District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.

POCSO Case No. 51(T)/17 U/s 12 OF POCSO Act

Date of Argument: **24.01.2019.**Date of Judgment: **24.01.2019.**

J U D G M E N T

- about 4:30 P.M at Tingkhang Sitalpur under Philobari P.S in the district of Tinsukia in absence of the informant and his wife in their house, the accused entered in their house and with sexual intention, pulled and pushed their minor daughter by holding her hand. When their co-villagers, Sri Sadananda Das and Sri Ashim Das saw the incident shouted the accused and the accused fled away. The informant came to know about the incident after returning home. He alleged that the accused tried to fall in love with his minor daughter since four years and he broke the love relationship at that time. Hence he lodged the case, for outraging the modesty of his minor daughter.
- 2. Receiving the FIR, Philobari P.S. registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused and forwarded to face the trial.
- in this court and upon hearing both sides and considering the materials on record charge u/s 12 of POCSO ACT has been framed, particulars of which on being read over and explained the accused had pleaded not guilty and claimed to be tried.
- **4.** During trial, prosecution examined Four (4) witnesses. The examination of accused u/s 313 Cr.P.C is dispensed with as no material ingredients of offence is found against the accused.
- 5. I have heard argument put forth by the ld. Counsel for both the sides as well as gone through the entire materials available on record.

6. POINT FOR DETERMINATION :-

(i) Whether the accused on 03.08.17 at about 4:30 P.M at Tingkhang Sitalpur under Philobari P.S in the district of Tinsukia had committed sexual harassment upon the victim girl and thereby committed an offence punishable U/s. 12 of POCSO ACT or not?

DISCUSSION, DECISION AND REASONS THEREOF:

7. P.W.1, Sri Niral Das has deposed that he knows the accused Jitul Das. The victim is his daughter. Now at present her age is 16 years. The Incident took place nearly two years back. On the date of incident he alongwith his wife Smt. Jubati Das had gone to the house of his brother, Sri Kalia Das @ Jitul Das to prepare knitting apparatus. When he he received information over phone from Debalata Das that something has happened in his house and asked him to come home immediately. Accordingly, he alongwith his wife came back to their house. He found that his daughter, victim was crying and on being asked Debalata Das told him that the accused had caught hold of his daughter. On being asked his daughter also told that Jitul Das had caught hold her hand and tried to drag her. She also told that the incident was seen by Sadananda Das and Ashim Das. He called them and they also confirmed that they had seen the incident but could not apprehend the accused. Thereafter he went to police station and lodged Ejahar. Ext. 1 is the Ejahar, Ext. 1(1) is his signature. Police had come, searched for the accused but did not find him. He also sent the victim for her medical check up at Philobari PHC. The victim was also produced before magistrate for recording her statement U/s. 164 Cr.P.C.

- 8. In Cross-examination he states that he has not seen the incident. After the incident, he appeared before the police station and furnished some settlement documents stating therein that there was a mistake of fact in lodging the FIR. Now at present if the accused is acquitted from the charges, he has no objection from any corner. They are living peacefully in their locality. As such, He does not want to proceed further with the case.
- 9. P.W.2, Smt. Jubati Das has deposed that she knows the accused Jitul Das. The victim is her daughter. Now at present her age is 16 years. The incident took place nearly two years back. On the date of incident she alongwith her husband, Sri Niral Das had gone to the house of her brother in law, Sri Kalia Das @ Jitul Das to prepare knitting apparatus. When she was there, at about 4:30 P.M, they received information over phone from Debalata Das that something has happened in their house and asked them to come home immediately. Accordingly, she alongwith her husband came back to their house. She found that her daughter, victim was crying and on being asked the victim told her that she has just woken up and Jitul Das came and caught hold of her daughter and was trying to drag her. At that point of time Sadananda Das and Ashim Das saw the incident and when Sadananda Das and Ashim Das shouted the accused fled away. Thereafter they confirmed the incident from Sadananda Das and Ashim Das. Thereafter her husband filed ejahar at the police station. Police had come to their house. Her daughter was sent for her medical check up at Philobari PHC. The victim was also produced before magistrate for recording her statement U/s. 164 Cr.P.C.
- **10.** In Cross-examination she has stated that she has not seen the incident. After the incident, she appeared before the police station and furnished some settlement documents

stating therein that there was a mistake of fact in lodging the FIR. Now at present if the accused is acquitted from the charges, she has no objection from any corner. They are living peacefully in their locality. As such, she does not want to proceed further with the case.

- P.W.3, the victim girl has deposed that Material Ext. 1 11. is birth certificate(Proved in Original). She knows the accused Jitul Das. The incident took place nearly one and half years back. At about 4:30 P.M. She was at home and her elder sister Mrs. Madhumita Das was sleeping inside the house. At that time Sri Jitul Das came to her house and caught hold of her hand. Sri Sadananda Das and Akhim Das who were passing in front of her house and seen this and they raised alarm and consequently Jitul Das fled away. A little later her parents came home she told them about the incident where upon her father lodged the ejahar. There after police came and interrogated her and police sent to Phillobari PHC for medical check up, she was also produced before the magistrate to recording her statement. Ext. 2 is her statement recorded by the magistrate. Ext. 2 (1) and Ext. 2 (2) are her signatures.
- 12. In Cross-examination she has stated that she knows the accused since last 4 to 5 years. The accused only kidded with her and due to misunderstanding of fact the present FIR was lodged against him. She has no grievances against the accused regarding the alleged incident.
- victim and he also knows the accused Sri Jitul Das. The incident took place one and half years back at about 4 P.M. At that time he was passing by the house of victim and saw that Sri Jitul Das was holding the hand of victim. Seeing him Jitul Das fled away. There after he told the incident to the parents of the victim.

- 14. In Cross-examination he has stated that later on he came to know that the accused kidded the victim and he had no any bad intention towards the victim and due to misunderstanding of fact the present FIR was lodged against him.
- 15. With regard to the point for determination Ld. counsel for the defence has pointed out that prosecution has failed to prove the case beyond reasonable doubt. There is no material ingredients of offence against the accused person. The victim herself has not alleged against the accused person and other PW's have also not alleged anything against the accused person. Hence the accused person should be acquitted and set at liberty.
- **16.** In reply Id. Addl.P.P has admitted that the victim and the other witnesses have failed to implicate the accused.
- 17. Upon hearing both sides, I have gone through the material evidence on record and found that the material witness victim i.e. PW 3 has deposed that the accused only kidded with her and due to misunderstanding of fact the present FIR was lodged against him. She has no grievances against the accused regarding the alleged incident. PW 1 & PW 2 the parents of the victim girl has stated during their cross examination they have no objection if the accused is acquitted. There is not an iota of evidence about the sexual harassment by the accused to the victim girl. Which proved that the prosecution has failed to prove that the accused had committed the offence of sexual harassment.
- **18.** In view of the above discussion and considering the evidence on record, I am of the considered opinion that the Prosecution has failed to prove the case against the accused U/s. 12 of POCSO Act beyond all reasonable doubts. Hence, the accused person namely 1) Sri Jitul Das is acquitted

and set at liberty.

- **19.** The Prosecution is directed to dispose of the seized material in accordance with law.
- **20.** Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.
- **21.** The case is disposed of herewith.
- **22.** Given under her hand and seal of this court on this the 24th day of January, 2019.

Dictated & corrected by me:

(A. Hakim),
District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

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District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

Transcribed by:

P.D Phukan, (Steno)

ANNEXURE

PROSECUTION WITNESSES:

P.W.1, Sri Niral Das,

P.W.2, Smt. Jubati Das,

PW.3, Victim girl.

PW.4, Sri Ashim Das.

PROSECUTION DOCUMENTS:

Ext. 1, is the Ejahar,

Ext. 2 is the 164 statement of the victim recorded by magistrate, Material Ext. 1 is the birth certificate(Proved in Original) of the victim girl.

> (A. Hakim), District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.