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

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.21/2017

U/S- 448 IPC r/w sec 8 of POCSO Act, 2012

State of Assam

-Versus-

Sidhanta Das

s/o-Khirod Das

Resident of vill – Krishna Nagar

P.S.- North Guwahati

Dist- Kamrup, Assam

-----Accused

Appearance:

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

Mr. S.I. Khan, Ld. Advocate ------for the accused

Date of evidence: 22.6.18, 12.10.2018

Date of Argument: 21.12.2018

Date of Judgment: 21.12.2018

JUDGMENT

- The Prosecution case, briefly narrating is that on 13.3.2017 the complainant Sri Alaka Das lodged an ejahar alleging that since 26.02.17 she was admitted to Mohendra Mohan Choudhury Hospital and availing the loneliness of the minor daughter of the Complainant, the accused— Sidhanta Das tried to commit bad act with her and on 12.03.2017 the accused came to their house and offered them some filthy language and threatened to kill the minor daughter of the informant. Hence, this case.
- On the basis of the said ejahar, North Guwahati P.S Case No. 26/17 U/S 354

 (A) / 447/294/506 IPC r/w Section 8 of POCSO Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 354(A) /447/294/506 IPC r/w Sec 8 of POCSO Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 448 IPC r/w Sec 8 of the POCSO Act, 2012 against accused—Moon Ali. The aforesaid charges were 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 4 (four) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against the accused person.

5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 12.03.2017 at about 3.00 p.m committed house trespass by entering into the dwelling house of the informant and, thereby, committed an offence punishable U/S- 448 of the POCSO Act, 2012 ?
- (II) Whether the accused person prior to lodging of the FIR from 26.2.2017 by taking advantage of absence of the complainant committed sexual assault on the informant's minor daughter by

giving bad indication and scuffling with her within the meaning of Section 7 of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S- 8 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the evidences on record.
- 7. P.W.1, is the M/O, Dr. Jugal Ch. Das of this case. He has deposed in his evidence that on 15.03.2017 he examined the prosecutrix under police requisition and found no any injury on the body of the prosecutrix. Ext.1 is the medical report and Ext. 1 (1) is his signature.
- 8. P.W 2 is the prosecutrix. She stated that the informant is her mother. The accused is her neighbour. Incident occurred on 26.02.2017 at about 6/7 p.m. At the relevant time, she was at home alone. Her mother was admitted in the hospital and her father was attending her. Then, the accused came to her house and expressed his love for her but she declined his proposal. Thereafter, the accused threatened to commit suicide. Pw-1 stated that the accused caught hold of her hand but she freed herself and went inside. The accused also left her house. Next morning, the accused told her friend-Dipanki Das that he did some bad act with her (prosecutrix). On her mother's return back home, pw-2 told her about the incident. Thereafter, her mother lodged the ejahar. Police took her to the doctor for medical examination and brought her before the Magistrate for recording her statement. Ext-2 is the said statement. Ext-2 (1 &2) are her signatures. In her cross-examination, pw-2 stated that they have no dispute with the accused. She disclosed that the accused did not do any bad act with her.
- 9. Pw-3 Smti Aloka Das deposed that she is the mother of the prosecutrix. She knows the accused, who is her neighbour. Incident took place on 26.02.2017 at about 6/7 p.m. Pw-3 was admitted in the hospital and her husband was with her. She was told by the prosecutrix that the accused had come to their house and expressed his love for her but the prosecutrix declined the proposal. Then, the accused threatened to commit suicide and he left their house. Ext-3 is the ejahar and Ext-3 (1) is her signature. In her cross-examination, pw-3 stated that the ejahar was

not written by her. Accused used to visit their house before the occurance. And they treated him like their son.

- 10. Pw-4 , Sri Durlabh Das is the father of the prosecutrix. He deposed that the incident took place during his absence from home. Prosecutrix told him that the accused visited their house and he expressed his love for the prosecutrix but she does not know as to what happened.
- 11. I have heard the arguments of both the sides. Perused the evidences on record.
- 12. In this case, charge was framed u/s 8 of POCSO Act. Now, question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence. Now, **Sexual Assault** is defined **U/S 7 of POCSO Act** as "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act.
- 13. Now, in this instant case, it is in the evidence of P.W.2 (victim) that on the date of occurrence, when she was alone at home, the accused who is her neighbor came to her home and expressed his love for her and caught hold of her hand. But P.W.2 declined his proposal. Thereafter, accused left the house. Evidence of P.W.2 reveals that the accused is a regular visitor to their home. She confirmed that the accused did not do any bad act with her. But, her mother (P.W.3) on being informed about the incident, lodged the ejahar against the accused. Witness, P.W.3 supported the evidence of P.W.2 and stated that victim informed her that on the date of occurrence, victim told her that the accused had come to their house and told her that he loved her but her daughter (victim) told him that she did not love her. P.W.3 did not know as to what is written in the ejahar. Again, P.W.4, who is the father of the victim stated that he was not at home on the day of occurrence but the victim (P.W.2) told him that the accused has visited their house and he expressed his love for her. P.W.1 is the M.O who examined the victim deposed that he could not find any injury on the body of the victim. Therefore, it is well proved that the accused did

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not enter the house of the victim with the intent to commit an offence. Hence, the offences U/S-448 of IPC R/W Section 8 of the POCSO Act,2012 are not at all attracted in this instant case.

- 14. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Sidhanta Das is held not guilty. He is acquitted of the offence U/S- 448 of IPC r/w Section 8 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.
 - 1. The case is disposed of.
 - 2. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 21st day of December, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, M/O, Dr. Jugal Ch. Das

P.W 2, prosecutrix

Pw-3, Smti Aloka Das

Pw-4 , Sri Durlabh Das

Prosecution Exhibit

Ext.1 is the medical report

Ext-2 is the said statement

Ext-3 is the ejahar

Special Judge, Kamrup, Amingaon