## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>29 OF 2017</u>

(Under Section 448 IPC read with section u/s 4 of the POCSO Act, arising

out of G.R. Case No. 1800/17)

Present :- Sri Ashok Kumar Borah, AJS

**Special Judge, Sonitpur** 

**Tezpur** 

Prosecutor :- State of Assam

-vs-

Accused :- Md. Sahar Ali,

Son of Md. Abdul Zabber Resident of Dolgaon Khuti Police Station – Dolgaon, Dist:- Sonitpur, Assam

Date of framing Charge :- 23/08/2017

Date of Recording Evidence 24/08/2017

Date of examination of accused u/s :- 24/08/2017

313 Cr.P.C.

Date of Argument :- 24/08/2017

Date of Judgment :- 24/08/2017

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. P. Biswas , Advocate.

#### **JUDGMENT**

**1.** In this case accused Md. Sahar Ali is put for trial for allegation of charge under Section 448 of the IPC read with section 4 of the POCSO Act, 2012.

- 2. The prosecution case according to the FIR in brief is that on or about 8 p.m. of 16-05-2017 accused trespassed into the house of the informant and forcefully took the informant's minor daughter Miss "X" and committed rape on her. While the informant not seen the victim in the house, he searched her vigorously but he could not found her. The accused threatened the victim that if she reported the matter to other persons she will be killed by a dao. Hence, this prosecution case.
- 3. The ejahar was filed by the informant before the I/C of Rakhashmari Police Out Post under Dhekiajuli police station on 19-05-2017. On receipt the ejahar, the I/C of Rakhashmari Police Out Post by giving GD entry No. 273 dated 19-05-2017 and forwarded the same to O/C Dhekiajuli Police station to register a case under proper section of law. Lateron, Officer-In-Charge of Dhekiajuli Police Station registered the case vide Dhekiajuli P.S. Case No. 413/17 u/s 457 of IPC r/w section 4 of the POCSO Act. After completion of usual investigation, the O/C Dhekiajuli Police Station filed charge sheet u/s 448 of IPC r/w section 4 of the POCSO Act against the accused Md. Sahar Ali.
- **4.** On being appeared the accused before this Court, after hearing both parties, I framed charge u/s 448 of the IPC read with section 4 of POCSO Act, 2012 against the accused Md. Sahar Ali and particulars of the charge was read over, explained to the accused to which he pleads not quilty and claims to be tried.
- **5.** To substantiate the case, prosecution has examined two witnesses i.e. the complainant and the victim. After recording evidence of the said complainant and the victim, learned counsel for the accused submitted to close the evidence on the ground that the statement of material witnesses reveals no any materials as to any of the alleged charge against the accused.
- **6.** Learned Public Prosecutor, Sonitpur, Tezpur has also conceded.
- **7.** On perusal of the statement of the aforesaid witnesses, i.e. complainant and the victim, it appears that none of the witnesses

reveals any materials of any alleged offence against the accused. Therefore, I think prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering all these aspects, prosecution evidence is closed. Accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for his explanation where he denied the allegations and declined to adduce defence evidence.

- **8.** I have heard the argument put forward by the learned counsels of both sides.
- **9.** The point for decision in this case is that -
  - (1) "Whether on or about 8 p.m. of 16-05-2017 at Narengkati Bangali under Dhekiajuli Police station, the accused committed criminal trespass by entering into the house of informant Md. Sahjahan Ali and thereby committed an offence punishable under section 448 of the IPC?
  - (2) "Whether on the same date, time and place, the accused committed penetrative sexual assault on "Miss X" (victim) and thereby committed an offence punishable under section 4 of the Protection of Child from Sexual Offences Act?

#### Reasons, Decisions and reason for decision.

- **10.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **11.** PW 1 Md. Sahjahan Ali stated before the court that he knows the accused Sahar Ali. Victim Miss "X" is his minor daughter. At the time of incident, the age of his daughter was 13 years. His victim daughter was missing from his house. At the relevant time he was not at home. In fact due to love affairs with the accused, his victim daughter went with the accused to enjoy function. On angry he lodged the ejahar. The ejahar was written by one scribe but his name is not known to him. His

victim daughter was medically examined and she was also sent to the court to record her statement.

In cross-examination, he admitted that he does not know the contents of the ejahar. In fact, the age of his victim daughter is 18 years 8 months at present. She does not have any knowledge about the age as mentioned in the FIR. On the said night of the function his victim daughter returned to the house. Accused has took his daughter to his house after enjoying function.

12. PW 2, Victim Miss "X", stated before the court that she knows the accused Sahar Ali. He is her co-villager. The incident took place at about three months ago. At the relevant day, she along with Sahar Ali went to enjoy Bihu function by taking permission from her mother. During that time her father was absent. After enjoying Bihu, accused took her to her house so the neighbor people falsely alleged the accused in the case. On suspect and instigation of local people her father filed this case against the accused. She loved the accused so she went with him at her own will. In fact there is no such incident took place as alleged in the FIR. After institution of the case she has been examined through the doctor and then she was also sent to the court for recording her statement. Ext. 1 is her statement recorded u/s 164 Cr.P.C. and Ext. 1(1) and 1(2) are her signatures.

In cross-examination she admitted that she was taught by the villagers what to made statement before the learned Magistrate therefore according to instruction of the local public she made such statement before the learned Magistrate. In fact no such incident took place as stated in Ext.1. At present also they have compromised the matter in between both the family in the village.

**13.** These much is the evidence of the prosecution case.

Now, the question come – whether the aforesaid evidence adduced by the complainant and the victim, the accused can be convicted?

- **14.** Since the case is charged u/s 448 of the IPC read with section 4 of POCSO Act so, I think to see what is the ingredients of 448 of the IPC and 4 of the POCSO Act.
- **15.** To prove the charge under Section 448 of the IPC, the prosecution must prove :-
  - "(i) that the accused committed criminal trespass.

    (ii) that such criminal trespass was committed by entering into, or remaining in, a building, tent or vessels.

    (iii) that such building, tent, or vessel, was used as a human dwelling or as a place of worship, or as a place for the custody of property."
- **16.** Similarly, to bring the charge under section 4 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 3 of the POCSO Act.

Section 3 of the POCSO Act quoted as follows:

<u>Section 3. Penetrative Sexual assault,</u> - A person is said to commit "pemetrative 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 body o 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.
- **17.** Coming to the present case, it appears that neither the complainant who is the father of the victim nor the victim reveals any materials as to any ingredients of any of the alleged offence.

**18.** Under such circumstances, I have no hesitation to hold that the prosecution has failed to prove any of the charge levelled against the accused beyond any reasonable doubt. Hence, I acquit the accused Md. Sahar Ali and set him at liberty.

### **19.** Send back the LCR.

Given under my Hand and Seal of this Court on this the 24<sup>th</sup> day of August, 2017.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

# **APPENDIX**

# **Prosecution Witness**

Prosecution Witness No.1 Sahjahan Ali, Complainant 1.

Miss "X", victim. 2. Prosecution Witness No.2

(Ashok Kumar Borah)

**SONITPUR: TEZPUR** 

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