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

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.69/2018

U/S- 4 of POCSO Act, 2012

State of Assam

-Versus-

Sri Debajit Das

s/o-Lt. Srimanta Das

Resident of vill –Bor Tezpur

P.S.-Palashbari

Dist- Kamrup, Assam

-----Accused

Appearance:

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

Sri Pankaj Choudhury, Ld. Advocate ------for the accused

Date of evidence: 19.01.2019

Date of Argument: 06.02.2019

Date of Judgment: 06.02.2019

JUDGMENT

- The Prosecution case, briefly narrating is that on 26.03.2017 the complainant

 Smti. Rachita Das lodged an ejahar alleging that on 24.03.2017 at about 9.00 p.m, the accused person— Sri Debajit Das took away her minor daughter by gagging her mouth and brought her to a nearby bank of a pond and had committed penetrative sexual assault upon her. Hence, this case.
- 2. On the basis of the said ejahar, Palashbari P.S Case No. 104/17 U/S- 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 4 of the POCSO Act, 2012 against accused—Sri Debajit Das. The aforesaid charge was 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 2 (two) 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 him.

5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 24.03.2017 at about 9.00 p.m committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the evidences on record. Heard Ld. Counsels for both the sides.
- 7. P.W.1, Smti. Richita Das is the informant. She stated that she knows the accused, who is her neighbour. Prosecutrix is her daughter. She stated that the

incident occurred about 2 years ago at about 9.00 p.m in her house. At the relevant time, prosecutrix was 14 years old. P.W.1 stated that the accused used to tease the prosecutrix and told her that he wants to marry her. On the relevant night, a quarrel had taken place between them and the accused for teasing the prosecutrix. When, the neighbours came to know that the accused teases the prosecutrix, then they advised them to give a case against him by implicating him in a rape case. P.W.1 further stated that the accused did not forcibly rape the prosecutrix as alleged in the ejahar. She disclosed that she gave the ejahar against the accused out of anger. Ext.1 is ejahar. Ext.1 (1) is her signature. P.W.1 stated in her cross examination that she did not write the ejahar by herself but it was written by her co-villager.

- 8. Pw-2, is the prosecutrix. She deposed that the informant is her mother and the accused is her neighbor. The incident took place in the year 2017 at 9 p.m. At the relevant time, she was in the house with her mother. The accused used to tease her and he would tell her that he wants to marry her. On the relevant night, an altercation took place between the accused and with her for teasing her. Thereafter, out of anger and advised by the village people, her mother lodged the ejahar. P.W.2 further stated that she deposed before the police and Magistrate as tutored by the village people. She revealed that the accused did not rape her or do anything bad with her. Ext.2 is the statement recorded U/S-164 Cr. P.C and Ext.2 (1 & 2) are her signatures. In her cross-examination P.W.2 has disclosed that no incident as alleged in the ejahar had taken place with her. The accused only teased her and did nothing to her.
- 9. Pw-3, is Smti. Gitanjali Das. She has deposed in her evidence that she knows the Informant, prosecutrix of this case as well as the accused person of this case, who are her neighbours. She further deposed that the incident took place 1 ½ years ago and on the date of occurrence, she heard that the informant and her daughter shouting at the accused person and quarrelling with him. But she did not know anything about the incident.
- 10. Pw-4, is Smti. Niru Das. She has deposed in her evidence that Informant of this case is her sister-in-law. Prosecutrix is her niece. She also knows the accused person. She further deposed that the incident took place 2 years ago at 9 p.m and on the date of occurrence, she saw the informant and her daughter shouting at the accused person and guarrelling with him. But she did not know anything about the incident.

- 11. I have heard the arguments of both the sides. Perused the evidences on record.
- 12. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 13. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative 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 the body of 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.
- 14. Now, in this instant case, there is no allegation by the prosecutrix of any penetrative sexual assault or any kind of sexual assault upon her by the accused person. The prosecutrix (P.W.2) made it clear in her evidence that the accused did not commit any penetrative sexual assault on her on the date of occurrence. She made it clear that the accused used to tease her and would tell her that he wants to marry her. But he did not rape her or do anything bad with her. P.W.1 and P.W.2 made it clear that on the relevant night, an altercation took place between them and the accused teasing the prosecutrix. These witnesses also stated that out of anger

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and advised by the village people, P.W.2 lodged a false case against the accused by

implicating him in a rape case. Other P.Ws (P.W.3 and 4) have also stated that ont

eh day of occurrence, they heard the informant and her daughter shouting at the

accused person and quarrelling with him. But they did not know anything about the

incident. The prosecutrix further revealed that she implicated the accused in her

statement before the police and in the statement recorded by the Magistrate U/S-

164 Cr. P. C as tutored by the villagers. Therefore, it has come out clearly that no

incident of penetrative sexual assault took place with the victim. Thus, the offence

U/S- 4 of the POCSO Act is not at all attracted in this instant case.

15. In the result, the prosecution has miserably failed to prove the case

beyond all reasonable doubt against the accused person. Accordingly, the accused

Sri Debajit Das is held not guilty. He is acquitted of the offence U/S- 4 of the POCSO

Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is

discharged from his liabilities.

16. The case is disposed of.

17. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 06th day of February, 2019.

Special Judge,

Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1 is Smti. Richita Das

Pw-2 is the prosecutrix

Pw-3, is Smti. Gitanjali Das

Pw-4, is Smti. Niru Das

Prosecution Exhibit

Ext.1 is the ejahar.

Ext-2 is the statement of the prosecutrix U/S-164 Cr. P.C

Special Judge, Kamrup, Amingaon