IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 8 (DH)/ 2018.

U/S 376/511 R/W Sec.8 of POCSO Act.

The State of Assam

- Versus -

Shri Arup Gogoi

.....Accused Person

S/O Suren Gogoi

R/O Ratanpur

P.S. Dhemaji,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri P.C Boruah, Advocate

.....For the Accused

Date of prosecution evidence

: 17-09-2018

Date of argument

: 17-09-2018

Date of Judgment

: 18-09-2018.

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JUDGMENT

- The prosecution case in brief is that on 11-12-2017 complainant- Hiren Konwar lodged an ejahar with Dhemaji Police Station alleging interalia that on that day i,e. 11-12-2017 while his minor daughter-Miss 'X' aged about 13 years was alone at her home, the accused-Arup Gogoi entered into his house and attempted to commit rape on her. His daughter raised hue and cry and tried to flee away from the clutch of the accused and in that process his daughter sustained injury on her right hand. Then the accused fled away.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Mini Das u/s 448/376 of IPC R/W section 8 of the POCSO Act.
- On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 448/376 IPC R/W Sec. 8 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined three witnesses. After closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

4. Point for determination:

(1) That, on 11-12-2017 at about 3 PM at Village-Aradhal under Dhemaji Police Station, you attempted to commit rape on Miss 'X', a minor girl aged about 13 years inside her dwelling house and thereby you committed an offence punishable u/s 376/511 of IPC.

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- (2) That, on the same day, time and place you committed sexual assault on Miss 'X', a minor girl aged about 13 years inside her dwelling house and thereby you committed an offence punishable u/s 8 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** Hiren Konwer stated that he is the complainant. He knows accused. Victim is his daughter. The incident took place in the month of December 2017. Accused is known to him. On the date of occurrence accused visited their house. His daughter was reading in her study room. All of a sudden accused entered in to her room and misbehaved her. Then she came out of the house and came to the house of her neighbor. They were away from home as they attended to their duties as service holder. She disclosed the incident to them. He lodged complaint. However, later on the accused's family members came to them and told them that he regretted his action and also stated that he had no ill intention, he just wanted to enquire about her daughter's wellbeing. Thereafter they sat together and decided not to proceed in this case. Ext.1 is ejahar. Ext.1(1) is his signature.

In cross examination PW1 stated that he has no objection if the accused is acquitted in this case.

7. **PW2** is the victim Miss 'X'. Complainant is her father. She knows the accused. The incident took place in the month of December 2017. Accused is known to her parents. On the date of occurrence accused visited their house. She was reading in her study room. All of a sudden accused entered in to her room and misbehaved her. Then she came out of the house and came to the house of her neighbor. Her parents were away from home as they attended to their duties as service holder. She disclosed the incident

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to her parents. Her parents lodged complaint. However, later on the accused came to her parents and he regretted his action and also stated that he had no ill intention, he just wanted to enquire about her wellbeing.

In cross—examination PW2 stated that her parents had a discussion with the accused and decided not to proceed in this case. She has nothing to say if her father is not willing to proceed against the accused in this case.

8. **PW3** Smti Ranu Konwar stated that she is the complainant. She knows accused. Victim is her daughter. The incident took place in the month of December 2017. Accused is known to her. On the date of occurrence accused visited their house. Her daughter was reading in her study room. All of a sudden accused entered in to her room and misbehaved her. Then she came out of the house and came to the house of her neighbor. They were away from home as they attended to their duties as service holder. She disclosed the incident to them. Her husband lodged complaint. However, later on the accused's family members came to them and told them that he regretted his action and also stated that he had no ill intention, he just wanted to enquire about her daughter's wellbeing. Thereafter, they sat together and decided not to proceed in this case.

In cross-examination, she stated that she has no objection if the accused is acquitted in this case.

Appreciation of evidence:

9. From the discussion of the evidence on record, it appears that in this case the victim and her parents were examined as P.W-1, PW2 and PW3 respectively. PW1 is the father of the Victim Miss 'X' and PWs- 2 is the victim girl . PW3 is the mother of the victim. In their evidence all the three vital witnesses stated that the accused entered into the room of the Victim and misbehaved her. Then the victim came out of her house and went to her

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neighbour's house. Victim disclosed the incident to her parents. Then PW1 lodged the complaint. However, later on the accused's family members came to them and told them that he regretted his action and also stated that he had no ill intention, he just wanted to enquire about her daughter's wellbeing. Thereafter, they sat together and decided not to proceed in this case. In cross-examination all the 3 vital witnesses have stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 10. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. I find that the prosecution has totally failed to prove the charges u/s 376/511 of IPC read with Sec.- 8 of the POCSO Act against the accused.
- 11. In view of the above, I find the accused-**Arup Gogoi** not guilty u/s 376/511 of the I.P.C. read with Section-8 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.

13. Given under my hand and seal of this Court on this the 18th day of September/2018.

(S. Das) Ditembli.