Present :- Mr. R.A. Tapadar, AJS

Date: 02.03.2020.

SPECIAL CASE NO. 102 of 2018

(Under Section 448 IPC R/W Sec.8 of POCSO Act)

The State of Assam

-Versus
Mohammad Ali
.......Accused Persons.

APPEARANCE

For the State......Mr. Uttam Kumar Sarkar, learned Spl.P.P.

For the DefenceMr. Y.A. Bepari, learned Advocate.

Date of framing charge : 07.03.2019

Evidence recorded on :-05.04.2019, 25.11.2019.

Argument heard on :-17.02.2020 Judgment delivered on :- 02.03.2020 .

JUDGMENT

- 1. Mohammad Ali (hereinafter referred to as "accused") is before this court facing accusation for the commission of offence U/s. 448 IPC R/W Sec.8 of POCSO Act.
- 2. The prosucution case, in brief, is that the informant, Ms. 'X' lodged an FIR before the I/c., Paglahat Watch Post under Tamarhat P.S on 2.2.17 and *inter-alia* stated that on 31.1.17 at about 1-30 A.M., while she was sleeping with her sister-in-law in the same house, at that time, the accused

person by opening the door of the house entered into her room and touched her different parts of her body and attempted to commit rape upon her. The informant stated that when she and her sister-in-law made hue and cry, the accused person threatened to kill her and left the place. The informant further stated that the accused person on earlier occasion attempted to commit rape of her sister-in-law. The informant also stated that the accused person gave her obscene gesture while coming from School. The informant prayed to investigate the case and to take action against the accused person.

3. Based on the FIR, the police of Paglahat Watch Post gave GDE No.26 dated 2.2.17 and forwarded the FIR to O/C., Tamarhat P.S for registration of the case. Accordingly, Tamarhat P.S Case No. 37/17 under Section 448/376/511/506 I.P.C read with section 8 of the POCSO Act was registered. S.I. Babul Ch. Boro took the investigation of the case. During the course of investigation, accused Mohammad Ali was arrested and was remanded him to judicial custody. The police after investigation of the case, submitted charge-sheet against the accused person under Section 376/506 I.P.C and Section 8 of the POCSO Act. The learned Special Judge transferred this case to this court for trial. The copies U/s.207 Cr.P.c were furnished to the accused person. The charges U/s. 448 I.P.C and Sec.8 of the POCSO Act were framed against the accused person. The charges were read over and explained to the accused person to which he pleaded not guilty and claimed trial.

- 4. The prosecution in order to establish the guilt of the accused persons examined as many as 4 (four) witnesses including the victim. The defence chooses not to lead any evidence. The statement of the accused person under Section 313 Cr.P.C. is recorded. The accused person pleaded his innocence.
- Heard both sides.

6. **POINS FOR DETERMINATION:-**

- i) Whether on 31.01.17 at about 1.30 AM at village Kachakhanachar, the accused person criminally trespassed into the dwelling house of the informant with an intention to commit offence of sexual assault and thereby committed an offence punishable under Section 448 IPC?
- ii) Whether on the same date, time and place, the accused person committed sexual assault to the informant who was a minor and thereby committed an offence punishable under Section 8 of POCSO Act ?

7. **DISCUSSION, DECISION AND REASON THEREOF:-**

I have gone through the evidence on record and also considered the submissions of the learned Special Public Prosecutor and also the learned counsel of the accused person. The charge against the accused person is that he criminally trespassed into the house of the informant and sexually assaulted her. The informant, PW-1, the victim in her evidence stated that about one year ago, there was some quarrel with the family of the accused person and at night, some unknown person threw stone on the roof of their house. PW-1 in her cross

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examination stated that the accused person did nothing to her and her

brother took her signature on a blank paper and she deposed earlier as

tutored by her sister-in-law. PW-2, in her evidence stated that on the date of

the incident, there was guarrel between the accused person and her

daughter-in-law. PW-2 stated that the accused person did nothing to the

informant. Both PW-3 & 4 in their evidence stated that there was some

quarrel. The evidence on record does not discloses the ingredients of

Sec.448 I.P.C and Sec.8 of the POCSO Act. Accordingly, the accused person

is aquitted from the charges under Section 448 I.P.C R/W. Sec.8 of the

POCSO Act and set at liberty, forthwith.

The bail bond of the accused person shall remain in force for a period

of six months in terms of Section 437A Cr.P.C.

Given under my hand and seal of this court on this 2nd day of

March, 2020.

Dictated & corrected by me

Special Judge, Dhubri

Mr. R.A. Tapadar, AJS Special Judge, Dhubri

APPENDIX

A. **Prosecution Witnesses:**

PW- 1 Ms. 'X'

PW-2 Anowara Bibi

PW-3 Md. Abdul Kalam

PW- 4 Md. Nowsad Ali

B. **Documents Exhibited by Prosecution:-**

Ext-1 Ejahar

Ext-2 The statement of the victim.

C. Defence Witnesses :- Nil

D. **Defence Exhibit**: Nil

Mr. R.A. Tapadar, AJS Special Judge, Dhubri