IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL POCSO CASE NO. :- 02 of 2017

(Under Section 18 of POCSO Act, arising out of G.R. Case No. 2557 of 2016)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur :Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1. Md. Babul Islam & Hussain

Son of Md. Gulzar Hussain Resident of Samdhara Police Station – Tezpur Dist:- Sonitpur, Assam.

Date of framing Charge :- 07-06-2017.

Date of Recording Evidence :- 13-11-2017

Date of examination of accused u/s :- 13-11-2017

313 Cr.P.C

Date of Argument :- 13-11-2017

Date of Judgment :- 13-11-2017

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. S. Borah, Advocate.

<u>JUDGMENT</u>

- **1.** In this case accused Md. Babul Islam @ Hussain is put for trial for allegation of charge u/s 18 of POCSO Act.
- 2. The prosecution case according to the FIR in brief is that on or about 2.30 p.m. of 07-08-2016 while the informant's daughter Miss "X" aged about 13 years came out from her uncle's house to her house through the field of Arahar, the accused Babul Hussain attempted to commit rape. On hearing alarm of the daughter of informant, they rescued her daughter. Hence, this prosecution case. The informant Somla Khatun has filed the ejahar before the Incharge of Borghat Police Out Post on 08-08-2016.
- 3. On receipt of the ejahar, the I/C of Borghat Police Out Post after giving the GD Entry being No. 160 dated 08-08-2016 forwarded the same to Officer-In-Charge of Tezpur Police Station for registering a case. On being receipt the ejahar, O/C Tezpur Police Station registered a case being Tezpur P.S. Case No. 1355/16 u/s 376/511 of IPC read with section 4 of the POCSO Act. After completion of usual investigation, the O/C Tezpur Police Station sent up the case for trial against the accused Md. Babul Islam @ Hussain u/s 376/511 of IPC read with section 4 of the POCSO Act.
- 4. On being appeared the accused person before this Court, after commitment of the record, after hearing both parties, framed charge u/s 18 of the POCSO Act against the accused Md. Babul Islam @ Hussain. Particulars of the charge were read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined two numbers of witnesses i.e. the complainant and victim. After recording the statement of the aforesaid witnesses, learned counsel for the accused submitted to close the evidence on the ground that the statement of the complainant and victim no way reveals any materials against the accused as to the alleged offence. Hence, it would be futile to examine the other witnesses. I have heard the learned Public Prosecutor who also conceded.

- **6.** On close scrutiny of the statement of the witnesses recorded so far, I have come to the conclusion that with the evidence of the said witnesses prosecution case would not develop even if examined the other witnesses.
- **7.** Speedy trial is the right of the accused person. Considering all these aspects, prosecution evidence is closed. Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.
- **8.** I have also heard the argument put forward by the learned counsels of both sides.
- **9.** The points for decision in this case is that -
 - (1) "Whether on or about 2.30 p.m. on 07-08-2016, at Samdhara, under Tezpur Police station, the accused attempted to commit any offence punishable under the POCSO Act or to cause such an offence to be committed and in such attempt, does any act towards the commission of the offence, on Miss "X", aged about 13 years), and thereby committed an offence punishable under section 18 of the POCSO Act?

Reasons, Decisions and reason for decision.

- **10.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 11. PW 1, complainant Somala Khatoon deposed before the court that the incident took place about one year back. Her victim daughter went to paddy field at about 12 O'clock to see Arahar cultivation from the house of her uncle. The victim girl after returned from paddy field informed her that the accused only hold her hand but did not do any bad act on her. Then she filed the ejahar. The ejahar was written by some other persons but not according to her dictation. She has filed the ejahar in the next day at the pressure of neighbours.

In cross-examination, she admitted that after writing the ejahar by the scribe, the same was not read over to her. She does not know the contents of the ejahar. She has not filed any case against the accused so she has no objection, if the accused is enlarged on acquittal.

12. PW 2, the victim Miss "X" stated that she knows the accused Babul Hussain @ Islam who is her neighbour. Complainant is her mother. At the time of incident she was 13 years old. The incident took place about one year back. On that day, in the morning she was at her uncle's house. After having launch she came out from the uncle's house at about 2 p.m. She went to paddy field of Arahar cultivation in Samdhara village. Accused simply hold her hand but did not do any bad act. She was afraid so shouted. On hearing her shouting one of their villagers rescued her and took her to her house. Then she reported the matter to her mother. Then her mother lodged the ejahar in the next day. After instituting the case her statement was recorded through the learned Magistrate. 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 out of fear she raised alarm. She has no objection, if the accused is enlarged on acquittal.

- **13.** These much is the evidence of the prosecution case.
- **14.** Here in the present case as stated above, the complainant and mother of the victim, PW 1, stated that that the accused only hold the hand of her daughter but did not do any bad act on her. Then she filed the ejahar. The ejahar was written by some other persons but not according to her dictation. She has filed the ejahar in the next day at the pressure of neighbours. She also admitted in cross-examination that after writing the ejahar by the scribe, the same was not read over to her. She does not know the contents of the ejahar. She has not filed any case against the accused so she has no objection, if the accused is enlarged on acquittal. By stating such statement, the informant gives good bye to the prosecution case. Her statement does not reveal any of the ingredients as stated above.

Next material witness is the victim i.e. PW 2 who stated that on the day of incident, in the morning she was at her uncle's house. After having launch she came out from the uncle's house at about 2 p.m., she went to paddy field of Arahar cultivation in Samdhara village. Accused simply hold her hand but did not do any bad act. She was afraid so shouted. On hearing her shouting one of their villagers rescued her and took her to her house. Then she reported the matter to her mother. Then her mother lodged the ejahar in the next day. After instituting the case her statement was recorded through the learned Magistrate. 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 out of fear she raised alarm. She has no objection, if the accused is enlarged on acquittal. Therefore her statement is also no way supported the prosecution case. In the present case, neither the complainant nor the victim supported the prosecution case. The statement of the complainant and victim no way reveals any ingredients as stated above.

- **15.** Under such circumstances, I have come to the conclusion that the prosecution has failed to prove the case against the accused Md. Babul Islam @ Hussain beyond any reasonable doubt. As such, he is acquitted from the charge u/s 18 of the POCSO Act and set him at liberty forthwith.
- **16.** The liability of the bailor is hereby discharged.

Send back the GR Case record being No. 2557/16 to the learned committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the $13^{\rm th}$ day of November, 2017.

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Complainant Samala Khatoon

2. Prosecution Witness No.2 :- Victim Miss "X"

SOMITHERIN

(A.K. Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR