IN THE COURT OF SPECIAL JUDGE (FTC), SONITPUR AT TEZPUR

SPL(POCSO) CASE NO. :- <u>60 of 2018</u>

(Under Section 4 of Protection of Children From Sexual Offence (POCSO) Act, Arising out of CR Case No. 3535 of 3019)

out of GR Case No 2535 of 2018)

Present :- R. Baruah

Special Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- Sri Nayanmoni Hazarika,

S/o Sri Puspa Hazarika, Resident of Napam,

PS – Tezpur,

Dist- Sonitpur, Assam

Date of framing charge :- 21-12-2019.

Date of Recording Evidence :- 05-03-2019.

Date of examination of accused

u/s 313 of Cr. P.C :- 05-03-2019.

Date of Argument :- 05-03-2019.

Date of Judgment :- **05-03-2019**.

Counsel of the Prosecution :- Mr A Baruah & Mrs J Baruah,

Learned Addl. Public Prosecutors,

Tezpur.

Counsel for Accused :- Smti M Bhagawati, P. Hazarika,

Learned Advocates.

JUDGMENT

1. In this case accused Sri Nayanmoni Hazarika is put for trial for the allegation of charge under Section 4 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act').

- 2. The prosecution case in brief is that on 26-06-2018 informant Siraj Ali lodged FIR before the Borghat Police Out Post stating inter alia that he with family reside in the land of another person at Napam. He and his wife remain busy as daily wage earner. His 15 year old daughter remain in the house and looks after the cattle. About few days ago they suspected the daughter to be pregnant and examined by doctor. They could come to know that their daughter is pregnant. On query his daughter informed that for some time, when his daughter goes for grazing the cattle, the accused lured her and maintained physical relation with her.
- 3. On receipt of the ejahar, I/C, Borghat Out post made GD Entry No 598 dated 26-06-2018 and forwarded the same to OC, Tezpur PS for registration and investigation. Accordingly, O/C, Tezpur Police Station registered the case vide Tezpur PS 1339/18 under Section 4 of POCSO Act. Police, after completion of investigation, submitted charge sheet against the accused Nayanmoni Hazarika for trial.
- 4. On appearance of the accused and after hearing the learned Advocate for both the sides, charge under Section 4 of POCSO Act framed against the accused. The above charge is read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution has examined only 3(six) nos. of witnesses including the victim namely 1. Md Siraj Ali, 2. Msstt Alekjan Bibi and 3.Miss "X"(victim).
- 6. Accused was examined under section 313 Cr.P.C. The defence plea is of total denial and declined to adduce defence evidence.
- 7. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.

- 8. The point for decision in this case is that
 - (1) "Whether the accused, prior to 26-06-2018 at Napam under Tezpur PS, committed penetrative sexual assault to Smti "X" aged about 16 years minor girl?

Reasons, Decisions and reason for decision:

- 9. Before appreciating the evidences adduced by the parties, I deem it fit to reflect the summaries of evidence of the witnesses.
- 10. **PW1** stated that he is the informant of this case. He knows the accused. Victim "X" is his daughter. He used to reside in the landed property of Amal Deka at Napam along with his family. He earned his livelihood working as daily wage earner. His wife also used to remain outside during day time for livelihood. About 6/7 months ago, they noticed that the abdomen of his daughter is becoming bigger. He informed the Aasha worker. The worker informed them that his daughter is pregnant. His daughter told him that due to relation with accused she has become pregnant. Accordingly, he lodged FIR. Ext.1 is his ejahar. Police examined his daughter by a doctor and also recorded her statement by Magistrate. About two months back his daughter gave birth to a female child. After some days, the child died. At the time of incident, the age of his daughter was about 19 years.

During cross, PW1 stated that he married about 20/21 years back. After one year of his marriage victim was born. He does not know whether there was love affair between the accused and his daughter. The physical relationship between them may take place due to the affair, and because of that his daughter may have become pregnant, but, he does not know. Presently, they have compromised the matter between them outside the court. He does not want to proceed with this case further. He has no objection if the accused is acquitted by this court.

11. **PW2** said that informant is her husband and victim is her daughter. She also knows the accused. She does not know the date and time, when the

occurrence took place. As the menstrual cycle of her daughter stopped, she enquired from her. Her daughter told that some days back when she had been to the field with herd of goats for grazing, the accused did bad thing with her and as a result, her cycle stopped. She took her daughter to an Aasha worker near her house and confirmed that her daughter is pregnant of seven months. She does not know the age of her daughter. After two months her daughter gave birth to a female child, but, after some days the child died.

In cross PW2 said that she does not know when she entered into wedlock. After one year of her marriage victim was born to them. She does not know the exact age of her daughter. They have not procured the Birth Certificate and School Certificate of her daughter. They have compromised the matter with the accused. She has no objection if the accused is acquitted from this case.

12. **PW3-** the victim of this case stated that informant is her father. She knows the accused. The incident is of 3/4 months back. There was love affair between her and the accused for last 1-2 years. One day while she went to graze to herd of goats, she met the accused. Physical relationship took place between them. Accused asked her not to disclose about the physical relationship to her family members. Her abdomen started swelling. On query, by her mother, she told her that due to physical relationship with accused, she became pregnant. Her mother took her to an Aasha worker and she also confirmed that she is pregnant of seven months. Her father lodged the FIR. Accused was arrested. After two months, she gave birth to a female child, but, the child died after some days. Presently, she is staying with her father.

In her cross-examination she said that they have compromised the matter with the accused outside the Court. If the accused is acquitted, she has no objection. As there was love affair between them, the physical relationship took place. At that time, her age was about 18 years.

13. The accused is charged under Section 4 of POCSO Act. To prove the charge under Section 4 of POCSO Act, prosecution must prove that –

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;
- 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 or 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 or the child to do so to such person or any other person".
- In this type of cases, the evidence of victim is material. Here in this case, **the victim PW-3** stated that there was love affair between her and the accused for last 1-2 years. One day while she went to graze to herd of goats, she met the accused. Physical relationship took place between them. In her cross-examination she said that she said that they have compromised the matter with the accused outside the Court. If the accused is acquitted, she has no objection. As there was love affair between them, the physical relationship took place. At that time, her age was about 18 years.

As per the POCSO Act, the victim should be less than 18 (eighteen) years at the time of occurrence. In this the father of the victim said that at the time of occurrence, the age of his daughter was 19 years. The parents are the also the best person to know the age of their wards. Further, the evidences on record mention that the physical relation between the accused and the victim was consensual. Physical relation between major boy and girl and with consent, cannot come under the POCSO Act. The consent of the parties can be presumed from the nature of reporting. It is only on suspicion the victim divulged that there was physical relation between her and the accused.

15. In view of the above discussions and reasons, it is held that ingredients of the alleged charge is prove by prosecution.

- 16. In view of the above, it is held that prosecution has failed to prove the offence against the accused beyond all reasonable doubt. Hence, accused **Sri Nayanmoni Hazarika** is acquitted and set him at liberty forthwith.
- 17. The bail bonds shall remain in force for six months from today.
- 18. Copy of this judgment be sent to the learned District Magistrate, Sonitpur, Tezpur as per provision of Section 365 of CrPC.

Given under my Hand and Seal of this Court on this the **5**th day of **March, 2019**.

(R Baruah) Special Judge Sonitpur,Tezpur.

Dictated and corrected by me.

(R Baruah) Special Judge, Sonitpur, Tezpur

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

ANNEXURE

Witnesses examined by the prosecution:

1.PW1 - Md Siraj Ali(informant),

2.PW2 – Msstt Alekjan Bibi, &

3.PW3 - Miss "X" (victim),

Witnesses examined by the Defence:

1.Nil.

Documents exhibited by the prosecution:

1. Ext. 1 : Ejahar,

(R Baruah) Special Judge, Sonitpur,Tezpur.