IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

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Present:	Smti. B. Kshetry
	Addl. Sessions Judge,
	Kamrup, Amingaon
	Special Sessions (POCSO) case No.23/2018

Kamrup, Amingaon

District:

U/S-377 of IPC R/W Section 4 of POCSO Act, 2012

State of Assam

-Versus-

1. Mantu Kalita

s/o-Lt. Rabin Kalita

Resident of vill –Sanpara Parbat

P.S.-Sualkuchi

Dist- Kamrup

-----Accused

Appearance:

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

Md. Kharsed Ali, Advocate ------for the accused

Date of evidence: 14.09.2018

Date of Argument:15.09.2018

Date of Judgment:15.09.2018

JUDGEMENT

- 1. The Prosecution case in brief is that—on 19.07.2015 the complainant—Sri Sankar Das lodged an ejahar against the accused—Sri Mantu Kalita alleging that on 07.02.2015 at about 12.30 a.m the accused committed penetrative sexual assault upon his minor son. And hence, this FIR.
- 2. On the basis of the said ejahar, Sualkuchi P.S Case No. 60/2015 U/S-377 of IPC R/W section 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-377 of IPC R/W section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 377 of IPC R/W section 4 of the POCSO Act, 2012 against accused—Mantu Kalita. The aforesaid charges were 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 as many as three (3) numbers of witnesses including the informant/ victim. 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 07.02.2015 at about 12.30 midnight at the road side had carnal intercourse against the order of nature with the minor son of the informant—Sri Sankar Das and, thereby, committed an offence punishable U/S 377 of IPC?
- (II) Whether the accused on the same day, time and place committed penetrating sexual assault on the informant's minor son and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

6.

Perused the record. Prosecution examined 3 (three) witnesses. Let us go through the evidences available on record.

- 7. P.W.1, Prosecutrix has deposed in his evidence that the informant is his father. He knows the accused—Mantu Kalita. The incident took place about 3 years ago at about 10/10.30 p.m. He was 13 years of age at the time of incident. On the day of occurrence, he went to the house of one—Achyut Baishya, who is an employee of a biscuit factory, to work with him as a helper. On returning home, as it was late night, so the accused—Mantu Kalita accompanied him to his house to drop him. Thereafter, the accused dropped him in his house and he left away. After, seven months of the incident, he was tutored by other village people to tell his father that the accused did some bad acts with him and his father, gave an ejahar against the accused person. Then, he told his father about the incident, which was tutored by the villagers. Police recorded his statement. Police brought him to doctor for medical examination and also brought him to the Court for recording his statement before the Magistrate U/S-164 Cr. P.C. Ext.1 is the statement recorded U/S-164 Cr. P.C. Ext. 1(1) and 1 (2) are his signatures. P.W.1 further deposed that he gave his statement U/S- 164 Cr. P.C as tutored by his father.
- 8. In his cross-examination, P.W.1 has stated that accused—Mantu Kalita did not do any bad act with him on the night of occurrence.
- 9. P.W.2, Sri Sankar Das has deposed in his evidence that—he is the informant of this case. Victim is his son. He know the accused—Mantu Kalita. The incident took place about 3 years ago at about 10/10.30 p.m. Victim was 15 years of age at the time of incident. P.W.2 further deposed that on the day of incident, Achyut Baishya, who works in a biscuit factory, called his son to his house to work as a helper. And on returning home, as it was late night, the accused—Mantu accompanied his son to his house. And on the next day, his son told him that the accused did some bad act with him on the way and after hearing this, he gave the ejahar. But, later, after seven months of the incident, his son told him that the accused did not do anything bad with him and he gave the allegation against the accused as tutored by the village people. Ext.2 is the ejahar. Ext. 2(1) is my signature.

- 10. P.W.3, Sri Achyut Baishya has deposed in his evidence that he knows the informant, victim as well as the accused of this case. The incident took place about 3 years ago. Victim was 15 years old at the time of incident. At that time, he was working in a biscuit factory. On the relevant day, he called the victim boy to come and help him in his work. It was almost 11/12 p.m. As it was late night, the accused went to accompany the victim to his house and dropped him. Thereafter, what had happened, he did not know. P.W.3 further deposed that police recorded his statement
- 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 victim boy of any penetrative sexual assault or any kind of sexual assault upon him by the accused

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person. The victim (P.W.1) made it clear in his evidence that the accused did not

commit any penetrated sexual assault on him on the date of occurrence. No incident as

alleged in the ejahar took place. Other P.Ws also supported the evidence of P.W.1 and

confirmed that no such incident as alleged in the ejahar had taken place. And the victim

implicated the accused as tutored by the village people. So, the offence U/S- 4 of the

POCSO Act is not at all attracted in this instant case.

15. Coming to Section 377 IPC, it has come out clearly from the evidence of

P.W.1 that the accused did not have carnal intercourse against the order of nature with

the victim boy. So, the offence U/S-377 IPC is also not attracted in this case.

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

all reasonable doubt against the accused person—Mantu Kalita. Accordingly, the

accused is held not guilty and he is hereby acquitted of the offence U/S-377 R/W

Section 4 of the POCSO Act, and set at liberty forthwith.

17. His bail bond stands cancelled. Bailor is discharged from the liabilities.

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

Given under my hand and seal of this Court on this 15th day of September, 2018.

Special Judge,

Kamrup, Amingaon

Cont'd---

APPENDIX

Prosecution Witness:

P.W.1 –Prosecutrix

P.W.2— Sri Sankar Das (informant)

P.W.3 – Sri Achyut Baishya

Prosecution Exhibit

Ext.1 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix Ext.2 is the ejahar.

Special Judge, Kamrup, Amingaon