IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 22 OF 2017

(Under Section **4** of the POCSO Act, r/w Section **417** of IPC, arising out of GR Case No 1612 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Sri Pranjit Das

S/o Sri Nilamoni Das, Vill- Bhalukmari, P.S. – Chariduar, Dist- Sonitpur.

Date of framing charge :- 21-08-2017.

Date of Recording Evidence :- 06-01-2018.

Date of examination of accused u/s: 06-01-2018.

313 of Cr.P.C.

Date of Argument :- 06-01-2018.

Date of Judgment :- **06-01-2018.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Mr RR Kalita, Advocate.

JUDGMENT

- 1. In this case accused Pranjit Das is put for trial for the allegation of charge under Section 4 of the POCSO Act, r/w Section 417 of IPC.
- 2. The factual matrix according to the FIR in brief is that the informant's grand-daughter Miss "X" was enticing by accused Pranjit Das after a love affairs and

thereafter, accused involved in illicit relationship with her. As a result, informant's daughter becomes seven months pregnant. Hence, this prosecution case.

- 3. The ejahar was filed by the informant Sri Bhaben Das before the OC, Chariduar Police Station on 17-05-2017.
- 4. On receipt of the ejahar, O/C, Chariduar Police Station registered the case vide Chariduar Police Station Case No 98/17 under Section 376(2)(1) of the IPC, r/w Section 6 of POCSO Act. After completion of investigation, O/C, Chariduar Police Station sent up the case against the accused person under Section 6 of POCSO Act, r/w Section 420 of IPC.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 4 of POCSO Act, r/w Section 417 of the IPC. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined three PWs i.e. the informant, victim and mother of the victim. After examination of the witnesses, learned Counsel for the accused submitted to close the prosecution evidence on the ground that neither the complainant nor the victim reveals any material as to alleged offence against the accused and therefore, it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. On perusal of the statement of complainant, victim and mother of victim, I think that prosecution case would not develop, even if examine the other prosecution witnesses, as they were no way supported the prosecution case. Even if examine the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused person. Considering this all, prosecution evidence is closed.
- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused persons and the allegations made against the accused person are put before me for his explanation where they denied the allegations and declined to give defence evidence.

- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that
 - (1) "Whether the accused, on or before on 07-05-2017, at Bhalukmari under Chariduar PS, committed penetrative sexual assault to Smti "X" aged about 14 years minor girl as a result she became 7 months pregnant and thereby committed an offence punishable under Section 417 of IPC, r/w Section 4 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- 12. PW1- Sri Bhaben Das, the complainant of this case deposed that Victim Miss "X" is his grand-daughter. At the relevant time, the victim was about 14 years of age. The incident took place in the month of May, 2017. At the relevant time, the victim was about six months pregnant (according to her). Accused had love affairs with his grand-daughter. When his grand-daughter become pregnant, he asked her how she become pregnant and then she told me that accused caused her pregnant as they had lover affair each other. Then, he called the accused and asked him about the pregnancy and requested him to take his grand-daughter and the accused also assured us that he will take her in the month of "Bohag". But, he did not take her. He again asked accused to take his pregnant grand-daughter. Even he has requested him 3rd time to take his grand-daughter. At last, he declared that on 10th of 'Bohag' he will marry my grand-daughter. Then he asked his grand-daughter what type of love affair with the accused. Then she shown him seven nos of letters issued by the accused. At last, he filed the case against the accused before police station. Ext. 1 is the ejahar filed by him and Ext. 1(1) is his signature. During investigation police seized one school transfer certificate of his victim granddaughter. Ext. 2 is the seizure list of that school transfer certificate and Ext. 2(1) is my signature.

In cross-examination he stated that victim is his grand-daughter from his

daughter's side. Their house is just ½ furlong from his house. If anything happened in his daughter's house, it cannot be seen from their house. He did not see anything about the incident. As per version of his grand-daughter he has filed the ejahar. He does not know the contents of ejahar. Accused is also his grand-son. He also admitted that the incident took place in between their own family, so, at present they compromised the matter. Therefore, he does not have any grievances against the accused. Even if the accused is acquitted they do not have any objection.

13. **PW2-** Smti Rumi Das, the mother of victim deposed that she knows accused Pranjit Das as he is her nephew i.e. the grandson of her Bordeuta. Victim Miss "X" is her daughter. At the relevant time, the victim was about 14 years of age. Her daughter had love affairs with accused. They demand accused to marry their victim daughter, but, he refused. At present, She does not like to proceed the case. As accused did not marry her daughter, so, they have filed this case. However, at present, they decided not to proceed the case as accused is her own relative.

In cross-examination, she stated that she does not have any objection, if the accused is enlarged on acquittal.

14. **PW3-** Miss "X", the victim of this case deposed that she knows accused Pranjit Das as he belongs to their same family. About one year ago when she went out for nature's call someone had dragged her towards the corner of our kitchen garden and committed misdeed to her. She does not have any love affairs with the accused. Earlier she has love affairs with the accused. Said love affairs was lasted for two three months. Thereafter, she seeks out relation with the accused. In earlier time accused used to visit our house. Therefore, her grandfather suspected accused to be the person involved in the act. At the time of filing the case, she was pregnant of seven month. She does not know from whose side she becomes pregnant. She also stated that after instituting the case by her grandfather, she has been brought to Court by police for recording her statement under Section 164 CrPC. After recording her statement the learned Magistrate read over the contents o f the statement and then she put her signatures. Ext.3 is the said statement and Ext.3 (1),3(2) and 3(3) are her signatures.

In cross-examination, she admitted that she has made statement before the learned Magistrate as per dictation of other villagers. She become pregnant not from the side of accused Pranjit Das but, from other persons. Accused is an innocent person. She does not have any objection, if, he is enlarged on acquittal.

- 15. These much is the prosecution evidence.
- 16. The accused is charged under Section 417 of the IPC, r/w Section 4 of POCSO Act. To prove the charge under Section **417** of IPC, prosecution must prove that
 - "(i) Accused voluntarily or dishonestly induced the complainant;
 - (ii) He did so for delivery of some property either to the accused or some other person; (iii) He intentionally induced the complainant to do a thing which he would not do omit to do thing which he would have done if not induced, (iv) such act caused was likely to cause some damage or harm to his body, mind, reputation or property."
- 17. From the statement of victim and other witnesses, it appears that none of the ingredients is fulfill by any witnesses. The victim by giving good bye to the prosecution case stated that accused is an innocent person and as such she does not have any objection, if, he is enlarged on acquittal. Therefore, allegation of charge under Section 417 of IPC is failed.
- 18. Next, come to prove charge under Section 4 of POCSO Act, prosecution must prove –

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) h e 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".

19. In this type of cases, the evidence of victim is much more important. Here in this case, **PW3**-the victim, Miss "X" no way supports the prosecution case. She herself stated that incident took place one year ago when she went out for nature's call someone had dragged her towards the corner of our kitchen garden and committed misdeed to her. She does not have any love affairs with the accused. Earlier she has love affairs with the accused. Said love affairs was lasted for two three months. Thereafter, she seeks out relation with the accused. In earlier time accused used to visit our house. Therefore, her grandfather suspected accused to be the person involved in the act. At the time of filing the case, she was pregnant of seven month. She does not know from whose side she becomes pregnant. In her cross-examination also she admitted that she made statement before the learned Magistrate as per dictation of other villagers. She become pregnant not from the side of accused Pranjit Das but, from other persons. Accused is an innocent person. She does not have any objection, if, he is enlarged on acquittal. Therefore, the victim no way supports the prosecution case. Similarly, the complainant and mother of the victim have not supported the prosecution case. **PW1**-the complainant stated that Accused had love affairs with his grand-daughter. When his grand-daughter become pregnant, he asked her how she become pregnant and then she told me that accused caused her pregnant as they had lover affair each other. Then, he called the accused and asked him about the pregnancy and requested him to take his grand-daughter and the accused also assured us that he will take her in the month of "Bohag". But, he did not take her. He again asked accused to take his pregnant grand-daughter. Even he has requested him 3rd time to take his grand-daughter. At last, he declared that on 10th of 'Bohag' he will marry my grand-daughter. Then he asked his grand-daughter what type of love affair with the accused. Then she shown him seven nos of letters issued by the accused. At last, he filed the case against the accused before police station. During cross-examination he stated that the incident took place in between their own family, so, at present they compromised the matter. Therefore, he does not have any grievances against the accused. Even if the accused is acquitted they do not have any objection. PW2- the mother of the victim also stated in her evidence that her daughter had love affairs with accused. They demand accused to marry their victim daughter, but, he refused.

At present, She does not like to proceed the case. As accused did not marry her daughter, so, they have filed this case. However, at present, they decided not to proceed the case as accused is her own relative. During cross-examination she also admitted that she does not have any objection, if the accused is enlarged on acquittal. Therefore, none of the ingredient of the alleged charged is proved by prosecution. Hence, charge under Section 4 of POCSO Act is failed.

- 20. On careful perusal of the whole case record, it appears that prosecution has categorically failed to prove any of the alleged charges against the accused. Hence, I do not have any hesitation to acquit the accused. Accordingly, accused **Pranjit Das** is acquitted and set them at liberty forthwith.
- 21. The liability of the bailor is hereby discharged.
- 22. Send back the LCR.

Given under my Hand and Seal of this Court on this the 6^{th} day of January, 2018.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.

Dictated and corrected by me.

(A. K. Borah) Special Judge, Sonitpur,Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

APPENDIX

Witnesses examined by the prosecution:

- 1.PW1 Sri Bhaben Das, Complainant,
- 2.PW2 Sri Rumi Das &
- 3.PW2 Miss "X" (victim).

Documents exhibited by the prosecution:

- 1. Ext. 1 : The ejahar.
- 2. Ext. 2: The seizure list of School Transfer Certificate.
- 3. Ext. 2: Statement of the victim recorded under Section 164 CrPC.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.