DISTRICT: SIVASAGAR.

IN THE COURT OF THE SESSIONS JUDGE, SIVASAGAR:::::::

Ref.:- Spl. (P) Case No. 17 of 2015

(Arising out of Demow P.S.Case No.155/2015)

U/S 8 of POCSO Act.

Present :- Sri S. Khound. Special Judge, <u>Sivasagar.</u>

The State of Assam : Prosecution

-Vs -

Sri Deba Guwalla : Accused

APPEARANCE:

For the prosecution/State of Assam : Sri A. K. Bora, P.P.,

Sivasagar.

For the accused : Jahanuddin Ahmed, Advocate,

Sivasagar.

Dates of depositions : 21.03.2016,

Date of argument : 03.11.2016

Date of Judgment : 17.11.2016

<u>JUDGMENT</u>

- 1 The accused Sri Deba Guwalla, S/O Sri Dhanpuna Guwalla, resident of Nitai Na-Gaon under Demow Police Station in the District of Sivasagar, here in this case has been put to face the trial to answer the charge U/S 8 of POCSO Act, 2012.
- 2. The fact as disclosed in the First Information Report (in short FIR) is that on 26.06.2015 complainant/victim Smti Sumi Guwalla, D/O Sri Dhanpuna Guwalla of Nitai Na-Gaon under Nitaipukhuri Out Post lodged an Ejahar, before the I/C of Nitaipukhuri Police Out Post alleging, inter alia, that on 25.06.2015, at about 4.00 p.m. in the afternoon, accused Deba Guwalla, who is her own elder brother sexually assaulted the victim in her house by taking the advantage of absence of other family members in the house at the relevant time. It is further alleged that accused

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also attempted to commit rape on the victim by dragging her to a nearby school and when victim refused to go there and raised hue and cry then accused assaulted the victim with a bamboo stick causing grievous hurt on her head and legs and thereafter accused left the scene of occurrence. Hence the complainant/victim lodged Ejahar and prayed for taking necessary action against the accused.

- 3. After receipt of the Ejahar from the complainant/victim Smti Sumi Guwalla, the said Ejahar was forwarded to O/C, Demow P. S. for taking appropriate action on the matter as per provision of law. On the basis of the said Ejahar police registered Demow P. S. Case No.155/2015 U/S 12 of POCSO Act, and investigated into the case. Accordingly Investigating Officer visited the place of occurrence and recorded the statements of the witnesses. During investigation I.O. arrested the accused person, sent the victim girl to the Civil Hospital for her medical examination and also forwarded the victim to the court for recording her statement U/S 164 Cr.P.C. On completion of investigation submitted Charge-Sheet against the accused U/S 12 of POCSO Act.
- 4. The accused Deba Guwalla produced before this court for trial after furnishing copy to the accused person as the case is exclusively triable by the court of Special Judge.
- 5. On appearance of the accused person before this court, and after hearing both the sides formally framed the charge against the accused U/S 8 of POCSO Act, 2012. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To bring home the charge, prosecution side has examined only two witnesses including the victim Smti Sumi Guwalla as P.W.1 and Sri Dhanpuna Guwalla as P.W.2. Defence cross-examined the said P.Ws but adduced no evidence.
- 7. I have heard Mr. D. K. Gohain, learned State defence counsel and Mr. A. K. Bora, learned Public Prosecutor for the State.

8. <u>THE POINT FOR DETERMINATION IS -</u>

Whether the accused on 25.06.2015, at about 4.00 p.m. committed sexual assault on the victim Smti Sumi Gowalla while she was alone in her house situated at Nitai Na-Gaon under Demow P.S. in the District of Sivasagar and thereby committed an offence punishable under Section 8 of POCSO Act, 2012 as alleged?

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DECISION AND REASONS THEREOF

- 9. To arrive at a judicial decision, let the evidence on record be appreciated.
- 10. P.W.1 is the victim Smti Sumi Gowalla who deposed that accused is known to her who is her own elder brother. Occurrence took place about 8/9 months back (from the date of deposition), and on the day of occurrence her brother-in-law Moonu Koiri along with his wife, i.e. the elder sister of P.W.1 came to their house and on that day a quarrel took place between accused and her brother-in-law. P.W.1 deposed that out of anger her brother-in-law Moonu Koiri brought the victim to the Police Station and as per the version of Moonu Koiri she had lodged Ejahar against the accused with false allegation. P.W.1 further deposed that accused did not misbehave with her. Ext.1 is the Ejahar where Ext.1(1) is her signature. P.W.1 further deposed that police brought her to the Doctor for medical examination and her statement was also recorded in the court. Ext.2 is the statement where Ext.2(1), Ext.2(2) and Ext.2(3) are the signatures of P.W.1. It is further deposed by P.W.1 that now she is not willing to proceed further with this case.

In cross-examination P.W.1 deposed that she is known as Sumi Guwalla and except this name she has no other nickname. P.W.1 further deposed that she had given her statement in the court as tutored by her brother-in-law Mooni Koiri. It is further deposed by P.W.1 that she had revealed her name as Sumi Guwalla before the Doctor at the time of her medical examination. P.W.1 deposed that now she is not interested to proceed further with this case and she has also no objection if accused is acquitted.

11. P.W.2 is the informant Sri Dhanpuna Guwalla who deposed that accused is his son and victim Sumi Guwalla is his daughter. Occurrence took place about 6/7 months back (from the date of deposition), and on the day of occurrence, after coming home from a village he saw Moonu Koiri had been assaulting the accused and caused grievous hurt on his head. Thereafter Moonu Koiri brought the victim Sumi Guwalla to the Police Station by threatening her and lodged a false Ejahar against the accused through victim Sumi Guwalla. Later on he heard that victim Sumi Guwalla also gave her statement in the court. P.W.2 further deposed that on the day of occurrence accused did nothing with the victim Sumi Guwalla. In cross examination P.W.2 deposed that he has no objection if accused is acquitted.

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- 12. Above are the evidence led by the prosecution in support of its case against the accused.
- 13. To prove the charge U/S 8 of POCSO Act against the accused, the prosecution is to prove that on the day of occurrence the accused committed sexual assault on the victim who is below 12 years of age. Sexual assault is defined in Section 7 of POCSO Act as follows:

"Whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

14. In the instant case it is seen from the evidence on record that victim Sumi Guwalla who herself deposed as P.W.1 nowhere stated regarding alleged sexual assault on her by the accused Deba Guwalla. P.W.1 victim Sumi Guwalla who is the king pin of this case deposed that on the day of occurrence only quarrel took place between accused and her brotherin-law Moonu Koiri and apart from this no occurrence took place on that day. The contents of the Ejahar is not at all supported by the victim (P.W.1) herself because on the day of occurrence accused did not touch her vagina, anus, chest or made her to touch anus, breast, penis of the accused or anybody else. Accused also did not do anything with sexual intent since the accused quarreled with Moonu Koiri only and that act gives no impression that the accused had any sexual intent in his mind at the time of alleged occurrence. P.W.1 in her evidence clearly deposed that on being tutored by her brother-in-law Moonu Koiri she lodged a false Ejahar against the accused, rather on the day of occurrence accused did nothing with her. It also transpires from the evidence of P.W.2 that after the occurrence Moonu Koiri brought the P.W.1 to the Police Station by threatening her and lodged a false Ejahar against the accused through victim Sumi Guwalla, rather on the day of occurrence accused did not misbehave with P.W.1. Apart from that during cross-examination P.W.1 and P.W.2 clearly deposed that they are not interested to proceed further with the case and they have also no objection if accused is acquitted.

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- 15. From the above depositions of P.Ws it is seen that there is absolutely no material against the accused to hold him guilty for the alleged occurrence.
- 16. In the backdrop of foregoing discussions, and on careful scrutiny of the entire evidence on record, I am of the view that the prosecution has failed to prove its case U/S 8 of POCSO Act, 2012 against the accused beyond all reasonable doubts. Accordingly I hold the accused not guilty and he is acquitted of the charge of offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and set at liberty forthwith. Bail bond stands cancelled.
- 17. Judgment prepared, pronounced and delivered in the open court under my hand & Seal of this court on this, 17th day of November, 2016 at Sivasagar.

(Sri S. Khound.) Special Judge, <u>Sivasagar</u>

Dictated & Corrected by me

(Sri S. Khound.) Special Judge, Sivasagar: