IN THE COURT OF THE SPECIAL JUDGE :: :: TINSUKIA

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 57 (T) of 2017

U/s 4 of the POCSO Act

The State of Assam	Complainant.
-Versus -	
Nazrul Ali @ Tikil	
S/o- Momtaj Ali	
R/o- Hansara Chariali	
P.S- Doomdooma	
District- Tinsukia, Assam	Accused.
Appearance:	
Sri B.L Agarwal,	
Spl. Public ProsecutorFor the Complainant	
Munna Kr. Singh,	
Advocate	For the accused.

Date of Argument: 01/09/2018

Date of Judgment: 01/09/2018

J U D G M E N T

PROSECUTION CASE

- 1. It is alleged in the ejahar that on 12/05/2017, at about 5 pm, the daughter of the informant was kidnapped by the accused. In the ejahar, it has been stated that the victim was 17 years old at that time. The ejahar was lodged by the mother of the victim.
- 2. During the period of investigation, the victim girl gave a statement u/s 164 Cr.PC, wherein she has stated that she was 17 years old at the time of the occurrence and she was in love with the accused. She further stated that she had eloped with the accused on her own and converted to Islam and thereafter married the accused according to Islamic rituals.

POINT FOR DETERMINATION

3. The only point for determination in this trial, is as to whether the accused had committed penetrative sexual assault upon the victim girl?

DECISION AND REASONS THEREOF

4. In order to prove the case against the accused person, the prosecution side has examined as many as six witnesses, including the victim. The defence plea is total denial. I have carefully gone through the prosecution evidences.

- 5. Considering the nature of the case, I shall first take up the evidence of the victim. She has stated in her evidence that she was in love with the accused and therefore, she had eloped with the accused and thereafter married him after embracing Islam.
- 6. The mother of the victim girl, who had lodged the ejahar before police has stated in her evidence that her daughter is presently staying with the accused and now she is seven months pregnant. She has stated that she has accepted the accused to be her son in law. At this stage, I find that the other witnesses have become irrelevant for the present case.
- 7. There is no doubt that in the instant case, the victim was a consenting part to the act of the accused. The accused herein is charged with the offence that he had committed penetrative sexual assault upon the victim. The word "assault" has not been defined in the POCSO Act. Therefore, it would be fruitful to delve into the section 351 of the Indian Penal Code. Section 351 of the I.P.C defines the word "Assault" like this:-

"Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault."

- 8. In POCSO Act also, it has been stated that whoever commits sexual assault shall be punishable.
- 9. The offences under POCSO Act are criminal offences and therefore, the intention to commit offence is an important point for consideration. In this case, the accused has married a 17 years old girl and according to religious rituals and

thereafter the mother of the victim accepted him as her son in law. This fact clearly shows that the accused never had the intention to commit an offence under POCSO Act. Under the circumstance, I find that the offence u/s 4 of the POCSO Act has not been proved against the accused beyond all reasonable doubt.

ORDER

10. In the result, the accused Tikil Ali @ Nazrul Ali is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 1st day of September, 2018.

(P.J. Saikia)

Special Judge

<u>Tinsukia</u>

Dictated & corrected by me.

Special Judge

Tinsukia

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Smti Ritu Moni Das
- 2. PW2 Smti Geeta Sahu

- 3. PW3 Smti Krishna Barman
- 4. PW4 Sri Dipak Das
- 5. PW5 Dr. Ashma Ghaznavi
- 6. PW6 Sri Chandan Das

PROSECUTION EXHIBITS

- 1. Ext.1- Statement u/s 164 Cr.PC
- 2. Ext. 2- Ejahar
- 3. Ext. 3- Medical report
- 4. Ext. 4- Sonography report

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>