### IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

#### SONITPUR, ASSAM

### Spl POCSO Case No. 02/2017

u/s 4 of POCSO Act, 2012

State of Assam

-VS-

Md. Mopdul Hussain

..... Accused person



Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Biswanath Chariali, Sonitpur.



For the prosecution: Ms. J. Kalita, learned Addl. P.P

For the defence

: Mr. T. Baruah, learned Advocate.

Dates of recording Evidence: 14.08.2018, 23.05.2019.

Date of Argument

: 30.07.2019.

Date of Judgment

: 30.07.2019.

#### JUDGMENT

- 1. The prosecution case in brief is that on 18.02.2015 the informant namely, Md. Noor Islam lodged an FIR with the OC, Biswanath Chariali PS stating inter alia that on 13.02.2015 at about 12 PM, the accused taking advantage of absence of other inmates in his house, committed rape on his minor daughter, whose age was 8 years at that relevant time. It was alleged that his another daughter Sen Bhanu had witnessed the accused going out of his house. Later, when Sen Bhanu came inside their house, she found the victim senseless. According to him, the victim was a dumb person.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused person u/s 376(2) (1) IPC r/w Section 4/5(g) of POCSO Act, 2012.
- 3. The accused in due course appeared before this court to face trial. The copies of the relevant documents were furnished to him. After hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed an offence u/s 4 of the POCSO Act, 2012,

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the charge was accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.

4. During trial, the prosecution examined three witnesses in all. The victim could not be examined as it was reported by the expert interpreter vide petition No. 1349/19 that the victim failed to communicate with her about the alleged incident. On the other hand, according to her, the victim stated to her by gestures that no such incident as alleged had taken place with her. Taking note of the same and the evidence as adduced by other witnesses, the prosecution evidence was closed upon submission of the learned Addl P.P.. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.

#### **Points for determination**

Whether the accused person on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

## Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant Md. Noor Islam. He stated that about 2-3 years back, after returning from his work he found his wife absent in his house. His daughter, who could not speak, was present in the house alone. She was about 7-8 years old at that relevant time. The aunt of the victim Jabida Khatoon (PW 3) told him that she could notice the accused going out from his house. When he asked his daughter, she could not properly say anything. He contradicted the FIR and stated that Sen Bhanu was not present in the house at that relevant time and she did not tell him anything about the incident. He after hearing from PW 3 and out of suspicion lodged the 'Ejahar' which he proved that as Ext. 1.
- 6. PW 3 on the other hand stated that on the day of the said occurrence, she saw the accused coming out from the house of the informant. She stated that her father had lodged an FIR against the accused out of suspicion. In her cross-examination, she stated that she did not witness anything of the accused misbehaving the victim in any manner.
- 7. Thus from the evidence of PW 1 and PW 3, we find that the Ext. 1 was lodged against the accused out of suspicion. PW 2 Musstt. Samila Khatoon stated that she is the mother of the alleged victim and the accused is her maternal uncle's son. She could learn about the incident from PW 3 and out of suspicion, the FIR was lodged by her husband.
- 8. Thus from the evidence of all the three witnesses as examined by the prosecution, we do not find any material against the accused on the offence charged against him. The

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### Spl. POCSO Case No. 02/2015

prosecution has failed to proved its case. As such I acquit the accused from the offence charged against him and set him at liberty forthwith. His bail bond stands discharged. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 30th day of July, 2019.

(D. BORA)

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Cold Section 1



#### **ANNEXURE**

## Witnesses examined by the Prosecution:

PW1- Md. Noor Islam

PW2- Musstt. Samila Khatun

PW3- Musstt. Jabida Khatun



# Exhibits proved by the prosecution witnesses:

Exhibit-1: Ejahar

## Witnesses examined by the Defence:

None.

## **Documents exhibited by the Defence:**

None.

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