IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.03/2018

U/S-8 of POCSO Act, 2012

State of Assam

-Versus-

Md. Merajul Islam

s/o- Md. Abhan Ali

Resident of vill -Kalakuchi Makalduba

P.S.-Mukalmuah

Dist- Nalbari

-----Accused

Appearance:

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

State

Syed Ismail Ali, Ld. Advocate ------for the accused

Date of evidence: 19.11.2018, 08.02.2019

Date of Argument: 12.02.2019

Date of Judgment: 12.02.2019

JUDGEMENT

- 1. The Prosecution case in brief is that—on 04.11.2015 the informant—Smti. Rupali Das lodged an ejahar alleging that accused—Merajul Islam came to the house of the Complainant and identified himself as having spiritual power of curing disease. Thereafter, on 03.11.2015, he came to the house of the informant to examine her husband—Subhan Das. He also examined the informant's minor daughter on that day. It is alleged that while he was examining the minor daughter of the informant he suddenly switched off the lights and touched her private parts. Thereafter, the daughter suddenly started screaming. Then, neighbours rushed and caught the accused. And hence, this FIR.
- 2. On the basis of the said ejahar, Palashbari P.S Case No. 273/2015 U/S- 8 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- 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 8 of the POCSO Act, 2012 against accused— Merajul Islam. 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 four (4) numbers of witnesses including the informant and 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 03.11.2015 at about 7.00 p.m committed sexual assault on the minor victim girl and thereby, committed sexual assault within the meaning of section 7 of the POCSO Act, 2012 which is punishable U/S-8 of the POCSO Act, 2012

6. **DISCUSSION, DECISION AND REASONS THEREOF**

Perused the record. Prosecution examined four (4) witnesses. Let us go through the evidences available on record.

- 7. P.W.1, Smti. Rupali Das is the informant. She knows the accused person. Prosecutrix is her daughter. She stated that at the time of occurrence, prosecutrix was 8 / 8 ½ years old. P.W.1 further stated that about 3 years before the date of occurrence her husband—Subhan Das was suffering from severe bodily pain for which the accused—Merajul was giving him local treatment. On the relevant date, the accused came to their house for giving local treatment to her husband and he also examined the prosecutrix for her illness. P.W.1 further stated that the accused took the prosecutrix to a room alone in her house for treatment and he prevented the other family members for entering inside the room. After some time, the electricity current went off, then she heard the shouts of the prosecutrix. Thereafter, P.W.1 and neighbouring people entered the room and caught the accused. P.W.1 disclosed that she lodged the ejahar against the accused out of misunderstanding. Later, she came to know from the prosecutrix that accused did not do anything with her. Ext.1 is the ejahar. Ext.1 (1) is her signature. Police seized the Original Birth Certificate of the prosecutrix and later give it in her zimma.
- 8. P.W.2, prosecutrix has deposed in her evidence that the informant is her mother. She knows the accused person. The incident took place about 3/4 years at about 5.00 p.m. P.W.2 disclosed that her father was suffering from some disease and the accused was giving him some local medicines. This witness also stated that on the date of occurrence the accused was first giving treatment to her father. As P.W.2 was also suffering from illness, the accused took her to the room alone for treatment and he prevented her family members for entering inside the room. After some time, the electricity current went off, then P.W.2 shouted out. On hearing her shouts, her parents and neighbouring people entered the room and caught the accused. But her mother lodged the ejahar out of some misunderstanding. P.W.2 disclosed that the accused did not do anything with her. Thereafter, police brought her before the Magistrate for

recording her statement U/S-164 Cr. P.C. Ext.3 is her statement. Ext. 3 (1) is her signature.

- 9. In her cross-examination, P.W.2 revealed that she deposed before the Magistrate i.e. Ext.3 as tutored by her parents and village people.
- 10. P.W.3, Jogen Das has deposed in his evidence that prosecutrix is his niece. The incident took place about 4/5 years ago at about 9/9.30 p.m. P.W.3 deposed that since 3/4 years before the date of occurrence, his brother—Subhan Das was suffering from severe bodily pain for which the accused was giving him local treatment. On the date of occurrence also, the accused came to their house for giving local treatment to his brother and also he gave treatment to the prosecutrix for her illness. This witness further disclosed that the accused took the prosecutrix to the room alone in their house for treatment and he prevented other family members from entering inside the room. After some time, the electricity current went off. Thereafter, on hearing the shouts of the prosecutrix, her family members and the neighbouring people entered the room and caught hold the accused. Then, the ejahar was lodged by P.W.1. P.W.3 further disclosed that he only heard about the incident. Ext.2 is the seizure list by which the Original Birth Certificate was seized. Ext. 2 (2) is his signature.
- 11. P.W.4, Sri Mahendra Das stated that prosecutrix is his niece. He heard from the informant that the prosecutrix shouted from inside the room as the accused tried to do something. He heard about the incident over phone. Then he came and saw the accused there. Apart from this, P.W.4 did not know anything.
- 12. I have heard the arguments of both the sides. Perused the evidences on record.
- is defined **U/S 7 of POCSO Act** as "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. Now, in this instant case, there is no allegation by the victim girl of any sexual assault upon her by the accused person. The informant (P.W.1) made it clear in her evidence that the accused did not commit any sexual assault on her minor daughter (P.W.2) on the date of occurrence. P.W.1 disclosed that she lodged the ejahar against the accused out of misunderstanding. Later P.W.1 came to know from the prosecutrix (P.W.2) that accused did not do anything with her. P.W.2 also made it clear that the accused only took her to the room alone for her treatment as she was suffering from some illness. P.W.2 further disclosed that the accused did not do anything with her. Other P.Ws also supported the evidence of P.W.1 and P.W.2 and confirmed that no such incident as alleged in the ejahar had taken place. So, the offence U/S- 8 of the POCSO Act is not at all attracted in this instant case.

15. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person—Merajul Islam. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S- 8 of the POCSO Act, and set at liberty forthwith.

- 16. His bail bond stands cancelled.
- 17. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 12th day of February, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Smti. Rupali Das

P.W.2, prosecutrix

P.W.3, Jogen Das

P.W.4, Sri Mahendra Das

Prosecution Exhibit

Ext.1 is the ejahar.

Ext.2 is the seizure list by which the Original Birth Certificate was seized

Ext.3 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Special Judge, Kamrup, Amingaon