IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge,

Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 12(DH)/ 2018.

U/S 376 (3) of IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

1. Shri Satya Gogoi,

S/O Phanidhar Gogoi,

Vill. Burabhakat

P.S. Dhemaji,

Dist.- Dhemaji.Accused Person

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri N. Saikia, Advocate

.....For the Accused

Date of prosecution evidence : 01-04-2019.

Date of argument

: 25-04-2019.

Date of Judgment

: 03-05-2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 16-08-2017 complainant- Shri Ramesh Gogoi lodged an ejahar with Dhemaji Police Station alleging interalia that on 07-08-2017 at Burabhakat Gaon under Dhemaji Police Station while his minor daughter Smt. 'X' (name is withheld) was alone at home, the accused Satya Gogoi came to his house with intent to show his daughter cinema on mobile phone and committed rape on his daughter, who was a student of Class-IX, inside the house. It is stated in the ejaharat that at the time of occurrence the complainant was at Arunachal and so it was late in filing the ejahar.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused person u/s 376 of IPC R/W Sec. 4 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 376 (3) of IPC R/W Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

4. Point for determination:

(1) That you, on 07-08-2017 at Village —Burabhakat under Dhemaji Police Station committed rape on Smti 'X', a minor girl aged about 13 years, and thereby you committed an offence punishable u/s 376 (3) of IPC.

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- (3) That you, on the same day, time and place you committed penetrative sexual assault on Smti 'X', a minor girl aged about 13 years and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** Smti 'X' stated that the Complainant is her father. She knows the accused. The incident took place about 2 years back. Accused is her relative, Accused frequently visited their house and she mixed-up with him freely. But, she noticed that the accused started behaving with her in a manner not expected from him (accused). So, she revealed the accused and just drove out of her home. She told her parents about the behavior of the accused. Accordingly, her father lodged complaint at the police station. After filing of the case, the accused came to their house and he was repentant and told her parents that in future he will not misbehave her. So, her parents decided not to proceed in this case against the accused. Her parents also gave her in marriage with another person.

In cross-examination PW1 stated that at present they are maintaining good relation and she has no objection if the accused is acquitted in this case.

7. **PW2** Shri Romesh Gogoi stated that he is the complainant. He knows the accused. Victim Smt. 'X' is his daughter. The incident took place about 2 years back. The accused is his relative. The accused frequently visited their house and his daughter mixed-up with the accused freely. But, she noticed that the accused started behaving with her in a manner not expected of the accused. So, she revealed the accused and just drove out of her home. She told her parents about the behavior of the accused.

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Accordingly, her father lodged complaint at the police station. After filing of the case, the accused came to their house and he was repentant and told them that in future he will not misbehave his daughter. So, they decided not to proceed in this case against the accused. They also gave their daughter in marriage with another person. Exhibit-1 is the ejahar and Exhibit-1(1) is her signature.

In cross PW2 stated that at present they are maintaining good relation and he has no objection if the accused is acquitted in this case.

Appreciation of evidence:

- 8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Romesh Gogoi were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the accused is their relative. The accused frequently visited their house and the victim 'X' mixed-up with the accused freely. But, she (victim) noticed that the accused started behaving with her in a manner not expected of him (accused). So, the victim revealed the accused and just drove out of her home. She told her parents about the behavior of the accused. Accordingly, her father (PW2) lodged complaint at the police station. After filing of the case, the accused came to their house and he was repentant and told them that in future he will not misbehave his daughter. So, they decided not to proceed in this case against the accused. They also gave their daughter in marriage with another person. In cross-examination, both PW1 and PW2 stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.
- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. It is also seen from the

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evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused. I find that the prosecution has totally failed to prove the charges u/s 376 (3) of IPC read with Sec.- 4 of the POCSO Act against the accused.

- In view of the above, I find the accused-**Satya Gogoi** not guilty u/s 376 (3) of the I.P.C. read with Section-4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 3rd day of May/2019

(**S. Das)** Special Judge, D**bama**ji.