#### IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.16/2015

U/S-377 of IPC R/W Section 4 of POCSO Act, 2012

State of Assam

-Versus-

Hafez Mustafa Rahul Amin

s/o-Md. Samsul Hoque

Resident of vill -hatisalapam

P.S.-Chhaygaon

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor ------

-----for the State

Md. Korban Ali, Advocate

-----for the accused

Date of evidence: 26.04.2018, 20.11.2018, 22.11.2018

Date of Argument:28.11.2018

Date of Judgment:28.11.2018

#### **JUDGEMENT**

- 1. The Prosecution case in brief is that—on 16.06.2014 the complainant—Md. Sakim Uddin lodged an ejahar against the accused— Hafez Mustafa Rahul Amin alleging that on 08.06.2014 at about 6.30 p.m the accused committed penetrative sexual assault upon the minor son of his Uncle. And hence, this FIR.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 201/2014 U/S-377 of IPC R/W section 4 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-377 of IPC R/W section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 377 of IPC R/W section 4 of the POCSO Act, 2012 against accused— Hafez Mustafa Rahul Amin. 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 08.06.2014 at about 6.30 p.m at village—Hatisola under Chhaygaon P.S, had carnal intercourse against the order of nature with the minor son of the informant's Uncle—Md. Abdul Matin and, thereby, committed an offence punishable U/S 377 of IPC?
- (II) Whether the accused on the same day, time and place committed penetrating sexual assault on the minor son of the informant's Uncle and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012 ?

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

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

- 7. P.W.1, Md. Sakim Uddin has deposed in his evidence that—he is the informant of this case. Victim is his cousin. He knows the accused— Hafez Mustafa Rahul Amin. He is their co-villager. Victim was 10 years of age at the time of incident. P.W.1 further deposed that on the day of incident, he was on the village road. Then the victim run to him and told him that the accused committed bad act on him inside his house. thereafter P.W.1 lodged the ejahar. Ext.1 is the ejahar. Ext. 1(1) is his signature. P.W.1 stated that the FIR was written under his instruction. Ext.2 printed form of the FIR and Ext. 2 (1) is his signature. Police interrogated him.
- 8. In his cross-examination, P.W.1 has stated that he lodged the ejahar after 5/6 days or about 10 days of the incident. he has not mentioned the reasons for delay in lodging the FIR in his ejahar. The FIR was written by scribe but he does not know the name of the scribe. P.W.1 revealed that there is a land dispute with the father of the accused and between his parents. Victim resides in different house in the same village. On the previous day of the occurrence, the victim harvested crops in the land of Samsul Huda, the father of the accused on wage basis.
- 9. P.W.2, Nazrul Hoque has deposed in his evidence that he knows the informant, victim as well as the accused of this case. The incident took place about 3/4 years ago. Victim was 15 years old at the time of incident. At that time, victim was studying in L. P school. He heard from the village people that the accused had committed bad act with the victim. A village mel was held regarding the incident but no decision was taken in the village mel. P.W.2 further deposed that police recorded his statement.
- 10. In his cross-examination, P.W.2 has stated that there was a land dispute between the informant and the father of the accused.

- 11. P.W.3, victim has deposed in his evidence that the informant is his cousin brother. He knows the accused. The incident took place about 3/4 years ago. he disclosed that there is a land dispute between the informant and father of the accused—Samsul Huda. On the relevant date, the father of the accused scolded him over some matter so he got angry with him. P.W.3 disclosed that no such incident as alleged in the ejahar had taken place with him on the date of occurrence but informant lodged the ejahar against the accused out of some enmity. Thereafter, Police brought him to doctor for medical examination and also brought him to the Court for recording his statement before the Magistrate U/S-164 Cr. P.C. Ext.3 is the statement. Police enquired from him about the incident.
- 12. In his cross-examination, P.W.3 has stated that he gave his statement before the Magistrate out of anger on the accused person as his father had scolded him. He disclosed that the accused did not do any bad act with him.
- 13. P.W.4, Sahabuddin has deposed in his evidence that he knows both the parties as well as the victim. The incident took place about 4/5 years ago. He heard that some bad relationship between the accused and the victim had taken place. He did not know about the land dispute between the accused and the informant.
- 14. I have heard the arguments of both the sides. Perused the evidences on record.
- 15. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- Section 3 of the POCSO Act deals with penetrative sexual assault.
  - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
    - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 17. Now, in this instant case, there is no allegation by the victim boy of any penetrative sexual assault or any kind of sexual assault upon him by the accused person. The victim (P.W.3) made it clear in his evidence that the accused did not commit any penetrated sexual assault on him on the date of occurrence. No incident as alleged in the ejahar took place. Other P.Ws also supported the evidence of P.W.3 and confirmed that no such incident as alleged in the ejahar had taken place. P.W.1, the informant has stated that there is a prolonged dispute in respect of the land where they lived in with the father of the accused and between his parents. P.W.2 and P.W.3 also made it clear that there is a land dispute between the informant and the father of the accused. And P.W.3 revealed that on the day of the occurrence the father of the accused scolded him over some matter for which he got angry and the informant lodged the ejahar out of enmity. So, the offence U/S- 4 of the POCSO Act is not at all attracted in this instant case.
- 18. Coming to Section 377 IPC, it has come out clearly from the evidence of P.W.3 that the accused did not have carnal intercourse against the order of nature with the victim boy. So, the offence U/S-377 IPC is also not attracted in this case.
- 19. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person— Hafez Mustafa Rahul Amin. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S-377 R/W Section 4 of the POCSO Act, and set at liberty forthwith.
- 20. His bail bond stands cancelled. Bailor is discharged from the liabilities.

21. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 27<sup>th</sup> day of November, 2018.

Special Judge, Kamrup, Amingaon

# **APPENDIX**

## **Prosecution Witness:**

P.W.1, Md. Sakim Uddin

P.W.2, Nazrul Hoque

P.W.3, victim

P.W.4, Sahabuddin

## **Prosecution Exhibit**

Ext.1 is the ejahar.

Ext.2 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Special Judge, Kamrup, Amingaon