IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present:

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

Special Judge,

Dhemaji,

JUDGMENT IN SPECIAL CASE NO. 21(DH)2017.

(G.R. Case No. 448/2017(SLP); Silapathar P.S. Case No. 179/2017 u/s 4 of the POCSO Act)

The State of Assam

- Versus -

Shri Dimbeswar Dihingia	Accused Person
S/O Lt. Jagat Dihingia,	
Vill. Maduri-pathar,	
P.S. Silapathar,	
Dist. Dhemaji (Assam)	

Special Judge,

Appearance:

Shri A. Fogla,

Public ProsecutorFor the State

Shri J. Dutta, Advocate,For the Accused person

Date of prosecution evidence

: 6-12-2017, 5-3-2018,

Date of defence evidence

: Nil

Date of arguments

: 5-3-2018,

Date of Judgment

: 5-3-2018.

JUDGMENT

- The prosecution case in brief is that on 28-5-2017 the complainant Smti Madhuri Basumatary lodged an ejahar with Silapathar Police Station alleging interalia that after 10 (ten) days of last 'Bohag Bihu' (2017) the accused called the victim 'X' (name withheld) over phone. Accordingly, she went to the house of the accused at about 1 P.M. on bicycle. But the accused, taking advantage of absence of any other persons at his home, forcibly committed rape on her. It is also alleged in the ejahar that the accused threatened her not to disclose the fact to any other person. So, she did not disclose the fact to others in fear. The victim thinking about her future, she reported the matter to her grandmother-Smti Kandi Doimary. It is also mentioned in the ejahar that as the accused threatened her not to disclose the fact of committing rape on her to any other person, there was delay in filing the ejahar. Hence the case.
- 2. On receipt of the ejahar police registered a case vide Silapathar PS Case No. 179/2017 Under Section 4 of the Protection of Children from Sexuality Offences Act, 2012 (POCSO Act). Police started investigation and on completion of investigation submitted charge sheet against the accused Dimbeswar Dihingia to stand trial under the said section of law.

Special Judge,

3. On receipt of the case record and on production of the accused this court considered the materials on record and upon hearing both the sides, framed charge u/s 4 of the POCSO Act and read over and explained to him to which he pleaded not guilty. Prosecution, in order to prove its case, examined 3 witnesses. The accused was examined u/s 313 of Cr. P.C. The defence plea is of total denial. Defence adduced no evidence.

The Point for determination:-

- 4. That you, on 11th day of March/2017 at about 8 PM committed penetrative sexual intercourse with the victim 'X', a child below 18 years of age at your own house and thereby committed an offence punishable u/s 4 of the POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. PW 1 Smti Bimala Basumatary stated that Complainant Madhuri Basumatary is her granddaughter. She knows the accused. The occurrence took place about one year back. Accused is her close acquaintance. They used to visit each others house. Her granddaughter also used to visit the house of the accused. They heard that accused misbehaved her granddaughter and she filed complainant before police against the accused. After the incident they had talk amongst themselves and the accused begged apology and as such they consider the matter as amicably settled.

In cross-examination PW1 stated that they suspected that the accused misbehaved their granddaughter but she cannot say for sure that he had committed any offence. Now they are maintaining good relation with the accused.

Special Judge,

7. PW-2 Smti Kandi Daimary stated that she knows the accused. She also knows the victim/complainant. The occurrence took place about one year back. Accused is her close acquaintance. They used to visit each others house. Her granddaughter also used to visit the house of the accused. They heard that accused misbehaved my granddaughter and she filed complainant before police against the accused. After the incident they had talk amongst themselves and the accused begged apology and as such they consider the matter as amicably settled.

In cross-examination PW2 stated that they suspected that the accused misbehaved their granddaughter but she cannot say for sure that he had committed any offence. Now they are maintaining good relation with the accused.

8. PW3 the victim 'X' stated that she is the complainant. She knows the accused. The occurrence took place about one year back. Accused is their close acquaintance. They used to visit each others house. On the date of occurrence she went to the house of the accused Dimbeswar Dihingia. He was present in his house. I had talk with him on some matters. Then the accused misbehaved her and verbally abused her. It hurt her and she told her parents about the incident. She also lodged an ejahar at Silapathar PS. Ext.1 is ejahar and Ext.1(1) is her signature therein.

In cross-examination PW3 stated that their elders called the accused and reprimanded him and thereafter they agreed to maintain cordial relation as before. So, they decided not to proceed against the accused in the case. I have no objection if the case against the accused ends in acquittal.

9. From the evidence of the vital three witnesses i.e. PWs- 1, 2 and 3, it is seen that they have not implicated the accused persons in commission of the alleged offence u/s 4 of the POCSO Act. Prosecution side has declined

Special Judge, Dhemait. to examine the other remaining witnesses as their evidence will not improve the prosecution case at all.

- 10. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused persons with the commission of the alleged offence. I find that the prosecution has failed to prove the charge u/s 4 of the POCSO Act against the accused person.
- 11. In view of the above, I find the accused person not guilty u/s 4 of the POCSO Act. Accordingly, the accused is acquitted of the charge leveled against him. Set them at liberty forthwith.
- 12. Judgment is pronounced in open Court.
- Given under my sign & seal on this the **5th** day of March, 2018.

Special Judge,