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.23/2017

U/S-323 of IPC R/W Section 8 of POCSO Act, 2012

State of Assam

-Versus-

1. Dipkan Das

s/o-Lt. Sunanda Ram Das

Resident of vill -Dihina

P.S.-Hajo

Dist- Kamrup

-----Accused

Appearance:

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

Jeherul Islam, Advocate ------for the accused

Date of evidence: 06.09.2018

Date of Argument:07.09.2018

Date of Judgment:07.09.2018

JUDGEMENT

- 1. The Prosecution case in brief is that—on 02.07.2017 at about 4.00 p.m while the informant was standing on the road near her house then the accused —Sri Dipkan Das forcibly took her to his house. And when she make hue and cry, her younger sister—Pritisikha Goswami came out to help her but the accused caused hurt to the informant and her younger sister. He also committed sexual assault upon them by tearing their wearing apparels. And hence, this FIR.
- 2. On the basis of the said ejahar, Hajo P.S Case No. 491/2017 U/S-323 of IPC R/W section 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-323 of IPC R/W section 8 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 323 of IPC R/W section 8 of the POCSO Act, 2012 against accused—Dipkan Das. 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 three (3) numbers of witnesses including the informant/ 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 02.07.2017 at about 4.00 p.m caused voluntarily hurt to the Complainant and her younger sister-Pritishikha Goswami and, thereby, committed an offence punishable U/S 323 of IPC?
- (II) Whether the accused committed sexual assault by tearing wearing apparels of the complainant and her younger sister with the meaning of section 7 of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S-8 of the POCSO Act, 2012 ?

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

Perused the record. Prosecution examined 3 (three) witnesses. Let us go through the evidences available on record.

- 7. P.W.1, is the informant as well as the victim of this instant case. She knows the accused person. The incident took place about 1 year ago at 4 p.m. At the time of incident, she along with her younger sister—Pritilekha Goswami were standing in the road in front of their house. On that day, a fight had taken place between her younger brother—Nayanmoni Goswami, aged about 7 years and the minor son of the accused over some matter while they were playing. Then, the accused and his wife came and scolded her and her sister without any reason. Thereafter, some scuffle had taken place between them, due to which they fell down and received some minor injuries. Thereafter, out of anger, P.W.1 lodged the FIR. Ext.1 is the ejahar. Ext.1 (1) is her signature. Police took P.W.1 for medical examination and also brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. Ext.2 is the statement recorded U/S-164 Cr. P.C and Ext.2(1) and 2 (2) are her signatures. She was 16 years old at the time of occurrence..
- 8. In her cross-examination, P.W.1 has stated that accused—Dipkan did not do anything with her.
- 9. P.W.2, Pritishikha Goswami has deposed in her evidence that the informant is her elder sister. She knows the accused person. The incident took place about 1 year ago at about 4 p.m. At that time she along with her elder sister—Chitralekha Goswami (P.W.1) were standing in their road in front of their house. On that day, a fight took place between her younger brother—Nayanmoni Goswami, aged about 7 years and the minor son of the accused out of some matter while they were playing. Then, the accused and his wife came and scolded her and her sister without any reason. Thereafter, some scuffle had taken place between them, due to which they fell down on the ground and received some minor injuries. Thereafter, out of anger her elder sister (P.W.1) lodged the FIR.

- 10. In her cross-examination, P.W.2 has stated that accused—Dipkan did not do anything with her.
- 11. P.W.3, Ramdev Goswami has deposed in his evidence that informant is his elder daughter. He knows the accused person. On that day while his two daughters (P.W.1 and P.W.2) were standing near their house then the accused and his wife came and scolded his daughters without any reason. Some kind of pulling and pushing had taken place between them and his daughter/prosecutrix (P.W.1) receives some minor injuries by slipping and falling on the ground. Thereafter, out of anger his daughter (P.W.1) gave the ejahar. This witness disclosed that there was a fight between his minor son and the son of the accused while they were playing.
- 12. In his cross-examination, P.W.3 has deposed that accused did not do anything with his daughters. His daughter (P.W.1) gave the case out of anger.
- 13. I have heard the arguments of both the sides. Perused the evidences on record.
- 14. Section 8 of the POCSO Act deals with sexual assault. Now, **Sexual Assault** 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."
- 15. Now, in this instant case, there is no allegation by the victim girl of any sexual assault upon her by the accused person. This informant (P.W.1) made it clear in her evidence that the accused did not commit any sexual assault on her on the date of occurrence. Other P.Ws also supported the evidence of P.W.1 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.
- 16. Coming to Section 323 IPC, it has come out clearly from the evidence of P.W.1 that a scuffle had taken place between them (the accused, his wife and P.W.1, P.W.2) without any reason. And in that scuffling, the informant/prosecutrix (P.W.1) received

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some minor injuries by slipping and falling on the ground. So, the offence $\mbox{U/S-323}$

IPC is also not attracted in this case.

17. In the result, the prosecution has miserably failed to prove the case beyond

all reasonable doubt against the accused person-Dipkan Das. Accordingly, the

accused is held not guilty and he is hereby acquitted of the offence U/S-323 R/W

Section 8 of the POCSO Act, and set at liberty forthwith.

18. His bail bond stands cancelled.

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

Given under my hand and seal of this Court on this 07th day of September, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1 –Prosecutrix

P.W.2— Pritisikha Goswami

P.W.3 – Ramdev Goswami

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