#### **HEADING OF JUDGMENT IN SESSIONS CASE**

District:- Goalpara.

# IN THE COURT OF SPECIAL JUDGE, GOALPARA.

Present:- Sri S. Hazarika, *A.J.S.* 

Special Judge, Goalpara.

# Spl. Case No.26/2018. U/s.8 of the POCSO Act.

State -vs-

# 1. Ashraful Hoque @ Hussain

..... Accused.

# Ld. Advocates appeared:-

For the State :- Sri N. K. Nath, Addl. Public prosecutor.

For the accused :- Mr.M. Hoque, Advocate.

Date of evidence : - 29/11/2018, 02/02/2019 & 27/02/2019.

Date of argument : - 27/02/2019.

Date of judgment : - 18/03/2019.

# **JUDGMENT**

1. The prosecution case appears from the F.I.R lodged by one Sahar Ali, is that, on 05/09/2018, at around, 4:00 P.M. his minor daughter( prosecutrix ) went to fetch cows from the field and on her away, the accused suddenly grabbed her and took her into his house. Thereafter, the accused squeezed her breasts and tried to commit rape upon her. The daughter of the informant raised hulla and on hearing her cries, the informant's son came forward and at this stage, the accused fled away from the P.O.

- 2. On receipt of the said F.I.R. O/C of Baguan P.S. registered the present case as Baguan P. S. Case No.104/2018 and the investigation was done. During the course of his investigation the I/O forwarded the victim girl to the Court for recording her statement and accordingly, her statement was recorded. The I/O examined the witnesses. The medical examination of the victim was done. After completion of investigation submitted Charge Sheet U/S.8 of the POCSO Act against the accused.
- **3.** The accused faced trial and the relevant copies of documents were furnished.

Upon hearing the submissions of both parties and after considering the materials on record, this Court was pleased to frame charge U/S.8 of the POCSO Act against the accused. The contents of the charge read over and explained to which the accused pleaded not guilt and claimed to be tried.

#### 4. POINTS FOR DETERMINATION IS:

- (i) Whether the accused on 05/09/2019, at around 4:00 in the evening at village Chengpota committed sexual assault by touching the private of the minor girl aged about 13 years ?
- 5. The prosecution side examined four witnesses including the informant and the prosecutrix. After the evidence of the prosecution side the statement of the accused recorded U/S.313 of Cr.P.C. Wherein he denied each and every circumstances against him.
- **6.** I have heard submissions advanced by learned Counsel for both parties and also gone through the evidence on record.

### **DECISION AND REASONS THEREOF:**

- 7. In the instant case, the prosecution side examined four witnesses. Among the witnesses P.W.1, Sahar Ali is the informant, P.W.2, is the mother of the proecution P.W.3 is the prosecutrix and P.W.4 S.Ali is the son of the informant.
- **8.** The accused allegedly committed sexual assault by touching the private parts of the prosecutrix who is a minor girl of about 13 years.
- **9.** The informant in the F.I.R alleged that the accused squeezed the breast of

the victim and also attempted to commit rape.

In his evidence he stated that his younger brother called him on the phone and returned home. He was informed by others that the accused touched the breast of his daughter. For this he lodged the F.I.R. The witnesses admittedly was not present at the time of the incident. He also admitted in cross-examination that he has got no personal knowledge.

- **10.** P.W.2 similarly gave evidence . She admitted that she only heard about the incident and she has no personal knowledge. Both the witnesses are hearsay witnesses and they have come to know about the incident on being informed.
- **11.** P.W.3 is the prosecutrix of the case and she is the prime witness of the case.

In her evidence she stated that 4/5 months earlier on a Saturday at about 4:00 P.M. she was in the Field. She was talking with Ashraful and her brother, Sabir Ali saw them. Her brother assaulted Ashraful.

- 12. The prosecutrix remained silent as to any act of indecency by the accused upon her. In her evidence she admitted that her brother assaulted the accused for which the accused lodged an F.I.R. The informant also admitted that he lodged the F.I.R. five days after odging the F.I.R. against his son.
- **13.** The prime witness in this case did not support the case and without her evidence, the charge against the accused cannot be proved.
- **14.** Lastly P.W.4 stated that on 5/5/18 at 4:30 P.M. he saw his sister having talk with the accused. The villagers asked his father to lodge the F.I.R.

P.W.4 is the eye witness to the occurrence. He remained silent regarding any attempt made by the accused to touch his sister, who is the victim of the incident.

- **15.** The prosecutrix as well as her brother(P.W.4) remained silent that the accused had touched the prosecutrix. Therefore, there is nothing to hold that the accused had committed the alleged offence.
- **16.** Considering the discussion above made, it appears that the prosecution has failed to bring home the charge against the accused and therefore, the accused

deserves to be Hon'ble acquitted.

**17.** The accused is accordingly acquitted.

Given under my hand and seal of this Court on this 18th day of March,

2019.

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

( Sri S. Hazarika, AJS,) *Special Judge, Goalpara.* 

Addl. Special Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara.

# **APPENDIX**

**Spl. Case No.26/2018.** 

| PROSECUTION WITNESSES:-                  |                         |
|--|-------------------------|
| PW1-Sahar Ali                            |                         |
| PW2-Abiron Nessa                         |                         |
| PW3-Prosecutrix                          |                         |
| PW4-Sobian Ali                           |                         |
|  |                         |
| <b>DEFENCE WITNESS:</b> -                |                         |
| NIL                                      |                         |
|  |                         |
| PROSECUTION EXHIBITS :-                  |                         |
| Ext.1 –164 Statement of the prosecutrix. |                         |
| DEFENCE EXHIBITS :                       |                         |
| DEFENCE EXHIBITS.                        |                         |
| NII                                      |                         |
|  |                         |
| <b>DEFENCE EXHIBITS :-</b>               |                         |
| NIL                                      |                         |
|  |                         |
|  | ( S. Hazarika, AJS)     |
|  | Special Judge,Goalpara. |