IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

POCSO Case No. 56/2018 U/S 8/18 of the POCSO Act

State of Assam

-VS-

Sh. Bipul Biswas S/o Sh. Dhiren Biswas R/o Village- Thengbhanga

P.S. – Mayong

District – Morigaon, Assam. Accused

Date of Charge : 29.05.2019.

Date of Evidence : 05.02.2020.

Date of Argument : 05.02.2020.

Date of Judgment : 05.02.2020.

Appearance for the Parties

Advocate for the State : Mr. A. Kalam, Ld. Special Public Prosecutor.

Advocate for the Accused : Mr. U. C. Roy, Ld. Advocate.

<u>J U D G M E N T</u>

- an FIR with Mayong Police Station alleging inter-alia that on 11.11.2017, at about 5:00 PM, while his minor daughter, the victim 'X' (name withheld) aged 12 years was bringing back the cows from the field, the accused Bipul Biswas, with ill motive gagged her mouth from the back side and took her to a little distance. On this, the victim made hue and cry on which accused fled away from the place. Thereafter, hearing shouting of the victim, two passerby Nirananda Das and Nabin Biswas rushed to the spot and enquired the girl about the incident and handed over her to the informant.
- 2. On receipt of the FIR, Mayong PS Case No. 357/2017 u/s 12 of the POCSO Act, 2012, was registered and investigated into. During investigation, the statement of the victim was recorded u/s 164 Cr.P.C and on completion of Pocso Case No. 56/2018

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investigation, the Investigating Officer (i/o) submitted charge sheet against the accused Sri Bipul Biswas for trial u/s 12 of the POCSO Act, 2012.

- **3.** It may be mentioned herein that during investigation, the accused was granted anticipatory bail on 19.01.2018. Upon receipt of summons, the accused appeared before this Court on 21.01.2019, with a prayer to go on fresh bail which was allowed.
- 4. On 24.09.2018, charge sheet was laid before this Court and vide order dated 29.05.2019, charges u/s 8/18 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty.
- During trial, prosecution side has examined only two witnesses including the informant and the victim. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- **6.** I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. U. C. Roy, learned defence Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE:

7. (i) Whether the accused has committed an offence punishable u/s 8/18 of the POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

8. PW-1, Sri Kanai Biswas, the father of the victim 'X' as well as the informant of the case deposed in his evidence that, the victim 'X' is his daughter and she was aged about 13 years at the time of incident. At present she is a student of Class-X. On the date of the incident, at evening hours while he was at his shop, Nirananda Das informed him that accused Bipul was assaulting the victim 'X' in the field. On this, he returned home and found that his daughter had returned from the field. On being asked, she told him that the accused Bipul attempted to assault her, she made hue and cry and on her cry, locals gathered there and recovered her. Nirananda brought her to home. On the next day morning, he lodged an FIR at Mayong Police Station by putting his thumb impression. In cross-examination, he stated that the accused is his cousin. He cannot say about the contents of the FIR. On the date of the incident, one of his cows entered into the field of accused and on

damaging crops, there was altercation between the victim 'X' and the accused PW 1 admitted that they have compromised the matter with the accused and has no objection in acquittal of the accused.

- 9. PW-2, the victim 'X' deposed in her evidence that she is presently aged about 15 years and studying in Class-X. On 11.11.2017, at 6:00 PM, while she went to field for bringing back cows, the accused attempted to assault her with a lathi on the ground that their cow went to the field of the accused. On this, she made hue and cry and on her cry, her uncle Nabin Biwas and Nirananda Das rescued her and bring her to the house. After returning home, she informed the incident to her parents. Her father filed a case against the accused. Police brought her to the Court for recording her statement. Ext. 1 is the said statement and Ext. 1(i) and 1(ii) are her signatures thereon. In cross-examination, she stated that the accused is her uncle in relation. Accused failed to assault her. Nabin Biswas was working in the field near to her. She admitted that presently, they have compromised the matter with the accused and the accused did not misbehave her.
- **10.** From the above evidence on record, it appears that so far age of the victim is concerned the victim and the informant claimed that at the time of incident, the victim was aged about 13 years. This fact remained unrebutted during cross-examination by defence.
- attempt of assault, accused did not make any attempt to commit sexual assault upon her. The victim clearly stated that on the date of incident, accused attempted to assault her with a lathi on the ground that their cows went to the field of the accused. PW-1, the father of the victim 'X' has corroborated this evidence of victim. PW 1 admitted the fact that on the date of the incident, one of his cows entered into the field of accused and on damaging crops, there was altercation between the victim 'X' and the accused. The victim categorically admitted that accused failed to assault her and that he did not misbehaved her.
- **12.** From the above evidence as discussed, it is clear that there is no material whatsoever regarding any attempt of sexual assault by the accused upon the victim 'X'.
- **13.** Considering above discussion, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 8/18 of POCSO Act against the accused Sri

Bipul Biswas. As such, accused Sri Bipul Biswas is acquitted from the charges u/s 8/18 of POCSO Act, 2012 and set at liberty forthwith.

- **14.** The bail bond executed by accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- **15.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **16.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **17.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 5^{th} day of February, 2020 at Morigaon.

Special Judge, Morigaon, Assam