IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl. (POCSO)Case No. 10/2017 u/s Sec. 4 of POCSO Act 2012

State of Assam

-VS-

Sri Phanindra Das @ Harindra Das

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P. For the defence : Mr. S. Rahman, learned Advocate.

Date of recording Evidence: 25.07.2018.

Date of Argument

: 25.07.2018.

Date of Judgment

: 25.07.2018.

JUDGMENT

- 1. The prosecution case in brief is that on 22.05.2017 the informant, Sri Ganesh Das lodged an FIR with the O/C, Halem P.S. stating inter-alia that on the previous day at about 5.30 p.m., his 15 year old daughter(name is withheld) was called by the accused, Harindara Das to the nearby Tea Garden and committed rape on her. Hearing the noise raised by her, his son went to the place of occurrence. But he found, both his daughter and the accused running on different directions. The accused was caught by his son. Later, they could know about the whole incident from the victim.
- 2. Receiving the same, the police registered a case and submitted charge-sheet against the accused u/s 4 of POCSO Act. The accused in due course appeared before this Court to face trial. The copies of the relevant documents were furnished to him. Upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this Court found grounds for presuming that the accused had committed an offence punishable u/s 4 of POCSO Act, the charge was accordingly framed against him, which on being read over and explained, he pleaded not guilty.
- 3. During trial, the prosecution examined the informant and the alleged victim. Looking into the evidence as adduced by both these two vital witnesses, the prosecution

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declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Looking into the materials and record, the prosecution evidence was closed. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 4. PW 1 is the informant, Ganesh Das. He stated that on the said day of the occurrence the accused had told him that he would take away his daughter. Later, when they found their daughter with the accused, they brought her back to house. For that incident, he lodged the FIR, which he proved as Ext. 1. In his cross-examination he stated that he has no knowledge as to what has been written on the FIR as he is an illiterate person. He stated that he lodged the FIR out of misunderstanding.
- 5. The PW 2- the victim stated that on the day of the said occurrence, her elder-brother Golok Das found her along with the accused and suspecting them of having any bad relationship, he caught both of them. Thereafter, her father lodged an FIR. She proved her statement recorded u/s 164 CrPC as Ext. 2. She stated in her cross that the accused is her the elder-brother in relation. The FIR was lodged due to the misunderstanding of her elder brother and her father. She stated that the accused did not misbehave with her and what she had stated in the Ext. 2 was based on what has been asked by others to state.
- 6. Thus, from the evidence of both these witnesses, more particularly from the evidence of the alleged victim, we do not find any material to convict the accused on the offence charged. The prosecution has failed to prove its case. As such, I acquit the accused person from the offence charged against him and set him at liberty forthwith. The petition no. 1467/18 filed by the accused u/s 437-A CrPC is allowed upon hearing both the sides. His bail bond is extended for a period of six months. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 25th day of July, 2018.

Additional Session Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

> Addl. Sessions Judge Biswanath Chariali, Sonitpur



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Ganesh Das

PW2- Victim



Exhibits proved by the prosecution witnesses:

Exhibit-1: FIR.

Exhibit-2: Statement u/s 164 CrPC.

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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Addl. Sessions Judge Biswanath Chariati, Sonitpur