### IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.77/2018

U/S- 448 IPC r/w sec 8 of POCSO Act, 2012

State of Assam

-Versus-

Md. Jiyabar Ali

s/o-Md. Hussain Ali

Resident of vill – Rangeswaripam

P.S.- Nagarbera

Dist- Kamrup, Assam

-----Accused

## Appearance:

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

A. Paramanik, Ld. Advocate ------for the accused

Date of evidence: 26.03.2019, 27.03.2019, 28.03.2019

Date of Argument:28.03.2019

Date of Judgment:28.03.2019

#### **JUDGMENT**

- The Prosecution case, briefly narrating is that on 01.01.2018 the complainant

   Musstt. Aduri Begum lodged an ejahar alleging that on 28.12.2017 at about 6.30 p.m, the accused—Md. Jiyabar Ali entered into her house and tried to commit bad act with her minor daughter by touching her breast and kissing her when she was alone in her house. Hence, this case.
- 2. On the basis of the said ejahar, Nagarbera P.S Case No. 01/18 U/S 448 of IPC r/w Section 8 of POCSO Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 448 IPC r/w Sec 8 of POCSO Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 448 IPC r/w Sec 8 of the POCSO Act, 2012 against accused—Md. Jiyabar Ali. 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 5 ( five ) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against the accused person.

#### 5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 28.12.2017 at about 6.30 p.m at village Rangeswaripam committed house trespass by entering into the dwelling house of the informant with intent to sexually assault the minor daughter of the informant and, thereby, committed an offence punishable U/S- 448 of the POCSO Act, 2012?
- (II) Whether the accused person on the same date, time and place committed sexual assault upon the minor daughter of the informant and, thereby, committed an offence punishable U/S- 8 of the POCSO Act, 2012 ?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. Perused the evidences on record.
- 7. P.W.1, Musstt. Adari Begum is the Informant of this case. She knows the accused person—Jiabor Ali. Prosecutrix is her daughter. P.W.1 deposed that the incident took place more than 1 year ago at about 5/6 p.m. Prosecutrix was 15 years old at the time of occurrence. P.W.1 was in the market at the relevant time. On her return from the market at 7.00 p.m, she did not find her daughter at home. Thereafter, on search P.W.1 found her in the house of the neighbour—Rubu and saw that the prosecutrix was crying. On enquiry, she told her that accused entered their house in her absence and caught hold of her. P.W.1 lodged the ejahar after 4 days of the incident. Police recorded her statement.
- 8. In the cross-examination, P.W.1 revealed that she did not know about the incident as she was outside the house at the relevant time. This witness disclosed that there was a quarrel between them with the accused over his goat grazing in their paddy field. P.W.1 also disclosed that she lodged the ejahar against the accused person as tutored by the village people. She made it clear that the accused did not do any bad act with the prosecutrix.
- 9. P.W 2 is the prosecutrix. She stated that informant of this case is her mother. She knows the accused person—Jiabor Ali. The incident took place about a year ago. P.W.2 stated that in the morning of the incident a quarrel had taken place between them with the accused over his goat grazing in their paddy field. Thereafter, her mother lodged the ejahar as advised by the village people. No incident as alleged in the ejahar and in her statement before the Magistrate U/S-164 Cr. P.C had taken place with her. P.W.2 disclosed that she gave her statement as tutored by the village people. Ext.1 is the statement. Ext. 1 (1 & 2) are her signatures. Police recorded her statement.
- 10. P.W 3 Md. Farid Ali deposed that informant of this case is his wife. He know the accused person—Jiabor Ali. Prosecutrix is his daughter. The incident took place more than 1 year ago in the evening time. Prosecutrix was 15 years old at the time of occurrence. P.W.3 was in Guwahati at the relevant time. On the next day, his wife

rang him and called him home. On the next day, he came home. On enquiry, his wife told him that accused entered their house in her absence and caught hold of the prosecutrix. She shouted out and the villagers gathered. P.W.1 did not enquire about the incident from prosecutrix. This witness stated that P.W.1 lodged the ejahar after 4/5 days of the incident. Police recorded his statement.

- In his cross-examination, P.W.3 revealed that he did not know about the incident as he was out of the house at the relevant time. He stated that there was a quarrel between them and the accused over his goat grazing in their paddy field. Informant lodged the ejahar against the accused person as advised by the village people. P.W.3 made it clear that the accused did not do any bad act with the prosecutrix.
- 12. Pw-4, Shahjahan Ahmed deposed that he knows both the parties. P.W.4 did not know the date of occurrence. P.W.4 only heard that there was fight between the accused and the family members of the prosecutrix over grazing of goat in their field.
- 13. P.W.5, Dr. Kartik patowary is the M/O of this case. He has deposed that on 02.01.2018 at 11.00 a.m he was working as Sub Divisional Medical & Health Officer, Nagarbera B.P.H.C. On that day, he examined one Musstt. Kariman Nessa, female, 13 years of age brought in reference with Nagarbera P.S case No. 01/18 U/S-448 of IPC R/W Section 8 of the POCSO Act, 2012. Victim was escorted by HG Jameruddin Mullah. On examination, P.W.5 found no significant clinical external injury on the body of the victim. Ext.2 is the medical report. Ext. 2 (1) is his signature. P.W.5 disclosed that he mentioned her age as stated to him.
- 14. I have heard the arguments of both the sides. Perused the evidences on record.
- 15. In this case, charge was framed u/s 8 of POCSO Act. Now, question comes, whether the offence committed by the accused falls u/s 8 of POCSO Act or any other offence. 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." **Section 8 of POCSO Act** prescribes the punishment for the offence u/s 7of the Act.

- 16. Now, in this instant case, it is in the evidence of P.W.2 (prosecutrix) that in the morning of the incident a quarrel had taken place between them with the accused over his goat grazing in their paddy field. She made it clear that no incident as alleged in the ejahar and in the statement made before the Magistrate U/S-164 Cr. P.C had taken place with her. P.W.2 disclosed that she gave her statement as tutored by the village people. She confirmed that the accused did not do any bad act with her. But, her mother (P.W.3) on being informed about the incident, lodged the ejahar against the accused. Witness, P.W.3, P.W.4 also supported the evidence of P.W.1. P.W.5 is the M.O who examined the prosecutrix deposed that he could not find any external injury on the body of the victim. Therefore, it is well proved that the accused did not enter the house of the victim with the intent to commit an offence. Hence, the offences U/S-448 of IPC R/W Section 8 of the POCSO Act,2012 are not at all attracted in this instant case.
- 17. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Md. Jiyabar Ali is held not guilty. He is acquitted of the offence U/S- 448 of IPC r/w Section 8 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.
- 18. The case is disposed of.
- 19. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 28<sup>th</sup> day of March, 2019.

Special Judge, Kamrup, Amingaon

## **APPENDIX**

## **Prosecution Witness:**

P.W.1, Musstt. Adari Begum

P.W 2 is the prosecutrix

P.W 3 Md. Farid Ali

Pw-4 , Shahjahan Ahmed

P.W.5, Dr. Kartik patowary

# **Prosecution Exhibit**

Ext.1 is the statement of the prosecutrix recorded U/S-164 Cr. P.C.

Ext-2 is the medical report

Special Judge, Kamrup, Amingaon