IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 9(DH)2018.

U/S 8 of POCSO Act.

(G.R. Case No.1059/2017 (SLP), Silapathar P.S. Case No.415/2017 Under Section 498 (A)/509/427/325 of IPC, read with Sec. 8 of POCSO Act)

The State of Assam

- Versus -

Shri Indreswar Hatimuria @ Indra,Accused Person

S/O Lt. Sonaram Hatimuria,

R/O Bam Kamchi Gaon,

P.S. Silapathar,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Smt. Illa Borgohain, Advocate

.....For the Accused

Date of prosecution evidence

: 02-06-2018, 26-07-2018

& 23-08-2018.

Date of arguments

: 13-9-2018

Date of Judgment

: 27-9-2018.

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 6-11-2017 complainant-Smti Junmoni Hatimuria lodged an ejahar at Sissiborgaon Police Out Post under Silapathar Police Station alleging interalia that on 4-11-2017 at about 2.30 PM in the afternoon the accused-Indra Hatimuria (complainant's husband) after consuming excessive liquor raised hue and cry in their house in her absence at home and caused damage the walls of the house and also the house-hold articles. It is also alleged in the ejahar that her (complainant's) minor daughter-Miss 'X' (name withheld) aged about 12 years while came home from her school, prevented the accused from damaging the house as well as the house-hold articles, then the accused pressed her on the ground and rebuked her with filthy language. The accused also told her (victim) that he will use her as his wife. It is further alleged in the ejahar that the accused torn the clothes of the victim and tried to commit rape on her. When the victim raised hue and cry, the accused kicked on her abdomen and went away.
- 2. On receipt of the ejahar, the I/C, Nirmal Ch. Biswas, Sissiborgaon Police Out Post made G.D. Entry vide No.91 dated 6-11-2017 and forwarded the same to O/C, Silapathar Police Station for registering a case under proper section of law. He (I/C) himself took-up investigation of the case. In the meantime, O/C, Silapathar Police Station, Subhan CH. Das registered the case vide Silapathar P.S. Case No. 415/2017 u/s 498 (A)/509/427/325 IPC r/w Sec. 8 of POCSO Act. On completion of investigation I/O Nitul Das submitted Charge-sheet against the accused-INdreswar Hatimuria u/s 509 of IPC R/W section 8 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 8 of POCSO Act and read-over and

explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 6 witnesses including the I/O and M/O. At the closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his case.

4. Point for determination:

- (1) That you, on 4-11-2017 at Village-Bam Kamchi under Silapathar Police Station, committed sexual assault on your own daughter Miss 'X', a minor girl aged about 12 years inside your house and thereby you committed an offence punishable u/s 8 of the POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof:

6. PW1 Smti Junmoni Hatimuria stated that she is the complainant. The accused is her husband. The victim Munmi Hatimuria is her daughter. She is aged about 13 years. At the time of occurrence victim was student of Class -VIII. Occurrence took place in the month of November 2017 at about 2 PM. At the time of occurrence she was away from home as she was working in the field. The accused (her husband) was at home. Her daughter had gone to school and returned home. Her daughter (victim) went to the field and told her that the accused after having drunk started breaking walls and door of their house and also caused damage the household goods and when she raised protest the accused got angry and rebuke the victim with filthy language. The accused also threw her on the ground and told her " he will use her (victim) as his wife" and the accused pressed that her body. The accused also kicked on her stomach. Then her daughter gave bite on his hand and somehow she released herself from the clutch of the

accused and ran away and met her (PW1) in the field. On hearing about the incident from her daughter, she immediately came back home and asked the accused/her husband as to why he had acted in such a manner; whereupon the accused started scolding her. Then she went to the Police Station and lodged the complaint. Police came and got her daughter medically examined and recorded her statement. Exhiubit-1 is the ejahar.

In cross-examination PW1 admitted that her husband (accused) is a habitual drinker and he used to create disturbance in their house. She denied that to get rid of her husband, she has falsely filed this case against him. She also denied the defence suggestion that her daughter did not tell her that her husband uttered to her daughter that he is going to use her daughter as his wife.

7. PW2 is the victim girl Miss 'X'. She stated that complainant is her mother. Accused- Indreswar Hatimuria is her father. Occurrence took place in the month of November/2017 at about 2 P.M. On the day of occurrence in the morning she had gone to school and her mother went to the field. Accused was at home. She returned home from the school at about 2 P.M. At that time accused was under the influence of liquor, started breaking the house-hold articles and also caused damage the walls and doors of their house in her presence. When she asked him to stop, he got angry and he threw her into the ground and pressed her body down. Accused also tore her wearing cloth (frock). Then, she gave bite on his hand and released herself and then ran away to meet her mother in the field. She told her mother about the occurrence. Her mother went to the Police Station and lodged the complaint. Her father told her that" he will use her (PW2) as his wife." Police came and took her for medical examination. Police also produced her before the Magistrate and got her statement recorded u/s 164 of Cr.P.C. Exhibit-2 is the 164 Statement and Ext-2(1) and 2(2) are her signatures therein.

In cross-examination PW2 admitted that her father (accused) is a habitual drinker and after having drunk, he used to rebuke us and also cause disturbance in their house. Her father used to scold her whenever he goes out. She denied the defence suggestion that as her father used to scold/rebuke them under the influence of liquor, they have filed this false case against him to get rid of him (accused/father). She also denied the defence suggestion that her father did not utter that "he would make her his wife."

8. **PW3** Smti Pompi Gogoi stated that she knows the complainant as well as the accused. She also knows the victim Miss 'X'. Complainant is her neighbour. About 6 months back one day complainant told her that her husband (accused) physically abused her daughter. She also knows that complainant filed case against the accused alleging that he (accused) physically abused her daughter.

In cross PW3 denied the defence suggestion that complainant did not tell her that her husband physically abused her daughter. She had not seen any such incident with her own eyes.

9. **PW4** Smti Renumai Hatimuria stated that she knows the complainant as well as the accused and the victim Miss 'X'. Complainant belongs to her village. About 6 months back one day complainant told her that the accused i.e. her husband physically abused her daughter.

In cross-examination PW4 denied the defence suggestion that complainant did not tell her that her husband physically abused her daughter. She had not seen any such incident with her own eyes.

10. **PW5** Dr. Pushpadhar Deori stated that 09-11-2017 he was posted at Sissiborgaon BPHC as Senior M&HO. On that day on police requisition vide GD Entry No.91 dated 06-11-2017 he examined the victim

MNIss 'X' accompanied/ escorted by WPC Rupahi Chutia of Sissiborgaon OP. On examination he found as follows:-

General behavior – Normal, Mental status- conscious. There is no external injury on her body or private parts.

General Physical examination- Average built, weight-30kg, teeth-28, development of auxiliary hair- not developed. Breast is well developed, no any injury in her private part. Pubic hair scanty.

Genital examination- Pubic hair scanty, Clitoris is normal, labia majora and minora- normal, forchette- normal, hymen status not known, vagina is normal and healthy, no injury no discharge.

Laboratory investigation- urine for pregnancy test-negative.

Ultrasonography – No visible sign of conception at the time of examination.

X-Ray- Wrist and elbow joint, Remarks- the person concerned is above 9 years and below 15 years as per report of Radiologist.

Opinion- On examination of her private parts no any injury and violence marks is found. According to the Radiologist the person concern is above 9 years and below 15 years.

Exhibit-3 is the medical report and EXt-3(1-2) are his signatures therein. EXt-4 is the X-Ray Report and EXt-4(1) is the signature of DR. B. Kuli which is known to him. EXt-5 is the pregnancy test report and EXt-5(1) is the signature of laboratory technician Chandra Saikia which is known to him.

Defence declined to cross-examine the Doctor.

11. PW6 Nirmal Chandra Biswas stated that on 06-11-2017 he was posted at Sissiborgaon OP as I/C. On that day he received an ejahar from Smti Junmoni Hatimuria. Accordingly, he made GD Entry vide No.91 dated 06-11-2017 and he forwarded the original copy of ejahar to OC Silapathar for registering a case and he took up investigation. He got the victim medically examined. He visited the place of occurrence and drew a sketch map. He recorded statement of witnesses u/s 161 Cr.PC. On 07-11-2017 OC Silapathar registered a case vide PS Case No.415/17 u/s 498 A /509/427/325 IPC. He was entrusted for the investigation. Victim was produced before Magistrate and her statement was recorded u/s 164 Cr.PC. He arrested the accused and sent him to court. On 10-11-2017 he was transferred and he handed over the case diary to OC. Remaining part of the investigation was entrusted to SI Nitul Das and he collected medical report of the victim. After completion of his investigation he filed charge sheet against the accused u/s 509 IPC R/W section 8 of POCSO Act.

Defence declined to cross-examine this witness

Appreciation of evidence:

12. From the discussion of the evidence on record it appears that accused is the father of victim/PW2. PW1 is the mother of the victim and wife of accused. In her evidence victim alleged that on the relevant date and at relevant time accused under influence of liquor started breaking all household articles and also caused damage to the walls and doors of his house and when victim asked him to stop, he physically abused her by pressing her body on the ground. PW1 heard about the incident from PW2 and made same statement as PW2. Victim also stated that accused uttered that he will use her as his wife. From the cross examination of PW2 it appears that the accused who is a habitual drinker used to scold/abuse his daughter and wife.

- On consideration of evidence of the evidence of PW1 and PW2, the vital witnesses in this case it is found that the accused is in the habit of scolding or torturing his daughter and wife. The evidence of these two PWs indicate that such things regularly happened in their house and in all probability being fed up with such behaviour of the accused this case has been filed. I have given my careful consideration to the fact materials and I am of the opinion that the accused had no intention for sexual assault on his daughter/victim. It may be mention here that after conclusion of evidence the victim and the wife of the accused filed petition stating that they have no objection if the accused is acquitted in this case.
- 14. Considering the materials in its entirety I find no case u/s 8 of POCSO Act is made out.
- 15. In view of what has been discussed above I find that prosecution has failed to prove an offence u/s 8 of POCSO Act beyond all reasonable doubt.

ORDER:

- 16. In the result I find accused Indreswar Hatimuria @ Indra not guilty u/s 8 of POCSO Act. Accordingly he is acquitted. Sett him at liberty.
- 17. Judgment is pronounced in open Court.
- 18. Given under my hand and seal of this Court on this the 27th day of Sept/2018.

Special Judge,