District-HOJAI.

IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE: FAST TRACT COURT: HOJAI, SANKARDEV NAGAR.

Present: N. Senabaya Deori, A.J.S Addl. Dist. & Sessions Judge, Hojai.

Spl. POCSO case No. 25/2018

U/s. 10 of POCSO Act

State

Vs.

Sri Moheswar Medhi, S/o, Lt. Kaliram Medhi, R/o, Baliram

P.S. -Jamunamukh, Dist. Hojai, Assam.

..... Accused Person.

Charge framed on : 25/05/18,

Prosecution Evidences recorded on : 26/09/18,

Argument heard on : 04/10/18, Judgment delivered on : 04/10/18,

Ld. Counsel for the State : Sri Amor Jyoti Saikia

Addl. P.P. Hojai.

Ld. Counsel for the Accused person: O.P. Pandey,

Advocate, Hojai Bar.

J U D G M E N T

This case arose out of Jamunamukh P.S. Case No. 50/2018 u/s. 10 of POCSO Act upon the gist of the facts stated in the FIR which has set this criminal case in motion against accused person.

- 1. The prosecution version, in short campus, is as follows:- An Ejahar was lodged by one Junmoni Hira alleging that on 27-04-18 at about 11.00 a.m. when there was less student then the accused/ Headmaster of the school sat near her daughter aged about 10 years and touched her private parts. After returning home, her daughter narrated the entire facts to her. Hence, the prosecution case against the accused person.
 - 2. On receipt of the Ejahar the I/O visited the place of occurrence and recorded the statement of the witnesses u/s-161 Cr. P.C. and prepared the

case diary u/s-172 Cr.P.C. Having found materials against the accused in the Case Diary, the I.O. submitted charge sheet against them under Section-10 of POCSO Act to face the trial before the court. During trial of the case, accused person entered appearance before the court of the Ld. Magistrate and the relevant copies were furnished to them u/s-207 Cr.P.C. The charges u/s. 10 of POCSO Act was framed against accused person and the contents of the charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION:-

(I) Whether the accused person on 27-04-18 at about 11.00 a.m. committed aggravated sexual assault upon the minor victim girl by touching her private parts, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF:-

- 4. In the instant case, the prosecution side has examined as many as 3 (three) witnesses namely, Junmoni Hira (P.W.-1), Moromi Hira (P.W.-2) and Sri Robin Hira as P.W.-3, in support of prosecution case; whereas, the accused person have adduced none of the witnesses for his defence.
- 5. In the evidence of P.W- 1, Junmoni Hira is to the effect that she is the informant in this case. She deposed that Victim Moromi Hira is her daughter. She knows the accused Maheswar Medhi. The occurrence took place about 4 months ago at Borjan L.P. School. Her daughter is a student of class—V of that school. On the day of occurrence at school time, the accused teacher of the school abused her daughter for not completing her home work. Out of fear she cried and came back home. Thereafter out of anger she lodged an Ejahar against the said teacher. Some villagers advised her to lodge the Ejahar. Ext—1 is the FIR and Ext—1(1) is her signature. In the cross, she deposed that the Ejahar was written by some other person as per dictation of the villagers. She does not know the contents of the said Ejahar. The accused has not committed any offence. She filed the Ejahar on the spur of the moment as because of the instigation of village people. She has no anguish against the accused and has no objection if the accused is acquitted from this case. In consonance with, P.W.-2 Moromi Hira who is the victim in this case stated in her evidence that Informant is her mother and she knows the accused Maheswar Medhi. He is their school teacher. The occurrence took place about 4 months ago at Borjan L.P. School. On the day

of occurrence at school her teacher abused her for not doing her home work. Out of fear she went home. Thereafter her mother lodged Ejahar against the said teacher. Police brought her to the court for recording her statement u/s 164 Cr.P.C. and she stated as per dictation of some village persons of their locality. Ext.-2 is the 164 statement and Ext.-2(1) and 2(2) are her signatures. In the cross, she deposed that the accused is her teacher and he had scolded her being not doing her home work. He has not done anything illegal to her and has no objection if the accused is acquitted from this case by the Hon'ble Court. Further, P.W.-3 stated in her evidence that Informant is his wife. Victim Moromi Hira is his daughter and he knows the accused Maheswar Medhi. The occurrence took place about 4 months ago at Borjan L.P. School. His daughter is a student of class—V of that school. On the day of occurrence at school time, the accused teacher of the school abused her daughter for not completing her home work. Out of fear she cried and came to home. Thereafter out of anger his wife lodged an Ejahar against the said teacher. In the cross, he deposed that the Ejahar was written by some other person as per dictation of the villagers. He does not know the contents of the said Ejahar. The accused has not committed any offence. His wife filed the Ejahar on the spur of the moment as because of the instigation of village people. He has no anguish against the accused and has no objection if the accused is acquitted from this case by the Hon'ble Court.

- 6. Ld. Defence Counsel humbly submitted that every accused is presumed to be innocent unless the guilt is proved. The courts must be on guard to see that merely on the application of the presumption; the same may not lead to any injustice or mistaken conviction. In the present case, there is no whisper of evidence on record implicating the accused in perpetration of alleged offence and thus, accused person deserve acquittal forthwith.
- 7. It transpires from 'Ejahar' filed by the mother of the victim girl alleging that on 27-04-18 at about 11.00 a.m. when there was less student then the accused/ Headmaster of the school sat near her daughter aged about 10 years and touched her private parts. The said fact is corroborated in the evidence of informant (P.W.-1), victim (P.W.-2) and P.W.-3. P.W-1/ Informant stated in his evidence that the occurrence took place about 4 months ago at Borjan L.P. School. Her daughter is a student of class—V of that school. On

the day of occurrence at school time, the accused teacher of the school abused her daughter for not completing her home work. Out of fear she cried and came back home. Thereafter out of anger she lodged an Ejahar against the said teacher. Some villagers advised her to lodge the Ejahar. Similarly, the victim girl also stated in her evidence that the occurrence took place about 4 months ago at Borjan L.P. School. On the day of occurrence at school her teacher abused her for not doing her home work. Out of fear she went home. Thereafter her mother lodged Ejahar against the said teacher. The father of the victim girl has also stated that The occurrence took place about 4 months ago at Borjan L.P. School. His daughter is a student of class -V of that school. On the day of occurrence at school time, the accused teacher of the school abused her daughter for not completing her home work. Out of fear she cried and came to home. Thereafter out of anger his wife lodged an Ejahar against the said teacher. That being the evidence on record, it can safely be concluded that the prosecution has failed to bring home the offence alleged against the accused person under section-10 of POCSO Act and thereby the acc used person is entitled to the benefit of doubt.

8. In summing up of evidence on record in its entirety and assessment thereof, this court arrived at the conclusion that the prosecution has failed to prove the alleged offence beyond all reasonable doubt against the accused person. Therefore, this court holds the accused Moheswar Medhi not guilty of the offence under section-8 of POCSO Act. He is acquitted and set at liberty forthwith.

Bailbond against the accused person is extended till six months under the same bailor.

Given under my hand with the seal of this court on this 4th day of Oct., 2018.

(N. Senabaya Deori)
Addl. Dist. & Sessions Judge, Hojai.

<u>APPENDIX</u>

1. Prosecution Witnesses:-

P.W.-1, Junmoni Hira P.W.-2, Moromi Hira

P.W.-3, Robin Hira

2. Defence witnesses:-

Nil

3. Prosecution Exhibits:-

Ext.-1, Ejahar,

Ext.-2, Statement recorded under section-164 Cr.P.C.

4. Defence Exhibits:-

Nil

(N. Senabaya Deori)

Addl. Dist. & Sessions Judge, Hojai.