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

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.13/2018

U/S- 4 of POCSO Act, 2012

State of Assam

-Versus-

Moon Ali

s/o-Md. Mukib Ali

Resident of vill -Thutikata

P.S.-Belsor

Dist- Nalbari, Assam

-----Accused

Appearance:

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

Mr. Safiqul Hussain Saikia, Ld. Advocate ------for the accused

Date of evidence: 30.10.2018, 22.11.2018, 14.12.2018

Date of Argument: 17.12.2018

Date of Judgment: 17.12.2018

### **JUDGMENT**

- The Prosecution case, briefly narrating is that on 22.01.2017 the complainant

   Sri Raju Das lodged an ejahar alleging that on that day at about 6.00 a.m, the accused person— Moon Ali had committed penetrative sexual assault upon his minor niece. Hence, this case.
- 2. On the basis of the said ejahar, Chhaygaon P.S Case No. 44/17 U/S- 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charge U/S- 4 of the POCSO Act, 2012 against accused—Moon Ali. The aforesaid charge was 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. Evidence of the informant has been dispensed with as he expired. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

#### 5. **POINT FOR DETERMINATION**

(I) Whether the accused person on 22.01.2017 at about 6.00 a.m committed penetrative sexual assault on the informant's minor niece and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

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

- 6. Perused the evidences on record. Heard Ld. Counsels for both the sides.
- 7. P.W.1 is the prosecutrix. She stated that the informant is her uncle. The incident occurred about 2/3 years ago at about 7.00 a.m in her house. At the relevant time,

she was studying in class-VIII. P.W.1 stated that on the previous day of the incident, the accused came to visit her house and he stayed there for the night. Pw-1 disclosed that the accused did not do anything with her. Her Uncle gave the case out of some mis-understanding. At present, her Uncle (informant) has expired. Police took her for medical examination and she was brought before the Magistrate for recording her statement. Ext.1 is the statement U/S-164 Cr. P.C. Ext.1 (1) and Ext.1 (2) are her signatures.

- 8. Pw-2 Smti Sunati Das deposed that she is the mother of the informant- Raju Das, who is now dead. Prosecutrix is her grand-daughter. Pw-2 knows the accused. Incident took place about 2 years ago during the morning hours. At the relevant time, pw-2 was having tea in her house. She was unwell. Then, she heard some 'hullah' in her house and heard that the accused did some bad act with the prosecutrix. This witness further disclosed that later on, she got to hear that the accused did not do anything with her but her son gave the case against the accused out of some misunderstanding. She confirmed her signature in the seizure –list as Ext-2 (1). Ext-2 is the seizure –list. M.Ext-A are the seized clothes as mentioned in Ext-2.
- 9. Pw-3, Smti Kalpana Das is the neighbour of the informant. She deposed that she knew both the informant as well as the prosecutrix. She stated that informant expired about 8 months ago. Pw-3 only heard that the accused was staying in the house of the prosecutrix but she does not know as to what happened.
- 10. Pw-4 Sri Sankar Das deposed that the informant has expired. Prosecutrix is the niece of the informant . Pw-4 does not know the accused. Incident took place about a year ago during the morning hours . This witness heard from the informant that he had a fight with the accused. He put his signature in the seizure –list. Ext- 2 is the seizure-list and Ext-2 (2) is his signature. M.Ext –A are the seized clothes vide Ext-2.
- 11. Pw-5 Smti Kanaklata Das deposed that the informant is her nephew and he expired 8 months ago. Prosecutrix is her grand-daughter. She does not know anything about the incident nor heard about it.
- 12. I have heard the arguments of both the sides. Perused the evidences on record.

- 13. **Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 14. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
  - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
    - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
    - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
    - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
    - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 15. Now, in this instant case, there is no allegation by the prosecutrix of any penetrative sexual assault or any kind of sexual assault upon her by the accused person. The prosecutrix (P.W.1) made it clear in her evidence that the accused did not commit any penetrative sexual assault on her on the date of occurrence. She admitted that the accused came to visit their house on the date of occurrence and he stayed for the night but no incident as alleged in the ejahar took place. He evidence reveals that her Uncle (informant) gave the ejahar against the accused person due to some misunderstanding. The prosecutrix further revealed that she implicated the accused in her statement recorded by the Magistrate U/S-164 Cr. P. C as tutored by her Uncle (informant). Therefore, the offence U/S-4 of the POCSO Act is not at all attracted in this instant case.

- 16. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Moon Ali is held not guilty. He is acquitted of the offence U/S- 4 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.
- 17. The case is disposed of.
- 18. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 17<sup>th</sup> day of December, 2018.

Special Judge, Kamrup, Amingaon

# **APPENDIX**

# **Prosecution Witness:**

P.W.1 is the prosecutrix

Pw-2 Smti Sunati Das

Pw-3, Smti Kalpana Das

Pw-4 Sri Sankar Das

Pw-5 Smti Kanaklata Das

# **Prosecution Exhibit**

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

Ext-2 is the seizure –list

Special Judge, Kamrup, Amingaon