

IN THE SPECIAL COURT :::::::::::::::::::: BAKSA AT MUSHALPUR

Present : Shri C. Das,
Judge, Special Court,
Baksa, Mushalpur

JUDGMENT IN SPECAIL POCSO CASE NO.05/2018(old No.28/16)

U/S 4 OF POCSO ACT.

State

-versus-

Sri Madhab Deka

..... Accused

Appearance :

For the State : Mr. B. Chetry, Public Prosecutor, Baksa

For the accused : Mr. A. Medhi, P. Gogoi, M. Murmu, S. Kachary, Advocates

Date of recording evidence : 03/4/17, 11/5/17, 7/6/17, 14/7/17, 20/11/17

Date of argument : 05/10/18, 12/10/18, 30/10/18, 14/11/18

Date of judgment : 20/11/18

JUDGMENT

1. The case of the prosecution briefly, is that on 31/3/15, the complainant Sri Deben Kalita lodged the ejahar before the Officer-in-charge of Goreswar police station, alleging inter-alia that taking advantage of his absence in his house, the accused committed rape on his 11 years old grand-daughter. His wife died before 6 months back after suffering from serious illness and since than, he is living with the victim girl. The accused is an Assistant Teacher of Simla Bapuji M.E. School.

2. On receiving the said ejahar from the complainant, the police registered the Goreswar PS. Case No.24/15 and swung into its investigation. During the investigation, the I/O visited the place of occurrence, prepared its sketch map


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and recorded the statement of the witnesses. The I/O also, sent the victim girl for medical examination and collected the report. At the end of the investigation, the I/O having found a prima-facie case well established, submitted the charge-sheet against the accused to face trial in the court.

3. After appearance of the accused in the court, he was furnished with the relevant copy of the case immediately. Accordingly, both the parties were heard and after perusing the material on record, the charge u/s 4 of Protection of Children from Sexual Offences Act, 2012 (in short; the POCSO Act) was framed against the accused. The charge so framed, was read over and explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution during the trial, examined as many as, ten(10) witnesses including the I/O and M/O to support its case. In the statement recorded u/s 313 CrPC., the accused took the plea of total denial. But the accused declined to adduce any evidence. The argument of the parties was heard at length.

POINT FOR DETERMINATION :

5. Whether on 31/3/15, at Pukhuripar under Goreswar police station, the accused committed penetrative sexual assault in his house and at the house of the informant upon the victim girl, grand daughter of the informant Sri Deben Kalita ;

DICISION AND REASON THEREFORE :

6. Learned Public Prosecutor, Baksa during his argument in support of the prosecution, submitted that the prosecution altogether examined ten witnesses and on the strength of their evidence particularly the evidence of the evidence of the victim girl aged below 18 years and a minor with the support of medical evidence, it is proved that the accused committed the offence which attracts the provisions u/s 4 of POCSO Act and therefore, the accused is liable for punishment as provided under the law. It is submitted that there cannot be any dispute over the age of the victim in the light of findings of medical officer in respect of her age since admittedly, the victim is found to be below 18 years of age and comes within the purview of POCSO Act. He relied the decision of **Hon'ble Gauhati High Court in Criminal Appeal (J) No.90 of 2015 Sri Jawngblam Narzary vs. State of Assam**, wherein, it was held as regards to age of the victim that *she*

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