IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, <u>Sivasagar</u>.

Spl. (P) Case No. 19 of 2018 u/s 4 of POCSO Act 2012 and Section 376 (i) IPC (Arising out of Demow P.S. Case No. 145/2018)

State of Assam

-Vs-

Sri Ajay Saora Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D.M. Neog, Advocate

Date of framing Charge : 29.10.2018
Dates of Evidence : 25.01.2019
Date of Argument : 25.01.2019
Date of Judgment : 25.01.2019

JUDGMENT

- 1. Prosecution case in brief is that on 21.05.2018, one Smt. Maya Mirdha lodged an FIR with O/C, Demow P.S. alleging, inter alia, that prior to few months back of filing FIR, accused Ajay Saora used to remain in her house with her daughter victim 'P' (name withheld) and by forcibly committing rape on the victim, caused her two months pregnant.
- 2. On receipt of the FIR, Demow P.S. Case No. 145/2018 u/s 4 of POCSO Act 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court u/s 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody.

Special (P) Case No. 19 of 2018

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person u/s 376 IPC.
- 4. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 29.10.2018, charge u/s 4 of POCSO Act 2012 and Section 376 (i) IPC has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses viz. the informant and victim.
- 5. Considering the nature of evidence of victim and informant, examination of accused u/s 313 Cr.P.C is dispenses with.
- 6. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. D.M. Neog, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINT FOR DETERMINATION IS:

7. (i) Whether prior to few months back of filing FIR on 21.05.18, accused committed sexual assault on the victim 'P'?

DECISION AND REASONS THEREOF:

- 8. PW-1 Smt. Maya Mirdha, mother of the victim in her evidence deposed that her daughter, victim P is presently aged about 20 years. About 3-4 months back of filing FIR, her daughter victim 'P' was married to accused and he stayed in her house with her daughter. However during her pregnancy, NGO people came to her house and took her, the victim and the accused to Demow P.S. and took her thumb impression (TI) marks in one paper. Subsequently, police arrested the accused and forwarded him to Jail custody. Presently victim and accused are living at her residence as wife and husband and they have one child. In her cross examination, PW 1 admitted that she lodged the FIR on being forced by NGO people. She did not want to prosecute this case any further. She has no objection in acquittal of the accused from this case.
- 9. PW-2 the victim P in her evidence deposed that accused is her husband and presently she is aged about 20 years. Having love affairs with Special (P) Case No. 19 of 2018

 Page 2 of 4

accused Ajay Saora, about a year back, they performed marriage and started living at her paternal house. However NGO people by taking them and her mother to Demow PS, filed a false case claiming her as minor. Police took her for medical check-up and also in court. She gave her statement in court. On that day, she deposed in similar lines. Presently she is residing at her matrimonial home with the accused and has one child through the accused. In her cross-examination, the victim has admitted that accused did not put force on her for marriage. Accused is innocent.

- 10. So far charge of sexual assault is concerned, from the evidence of PW-1 and PW-2, it appears that victim is aged about 20 years and hence she has right to choose her life partner. PW-1 being the mother of the victim in her evidence categorically stated that about 3-4 months back of filing FIR, victim was married to accused and accused used to remain in her house with her daughter. Both PW-1 and PW-2 in their evidence clearly stated that during pregnancy of the victim, NGO people came to their house and took them to Demow PS and by taking the thumb impression of PW-1 in one paper, filed this false case on the pretext that victim is minor. PW-2 the victim also admitted that accused did not put force on her for marriage. So from the evidence of PW-1 and PW-2, it appears that the allegation brought against the accused was not supported by the informant as well as the victim herself. In her evidence the victim nowhere stated that accused has committed sexual assault/rape on her against her will.
- 11. Considering above, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 4 of POCSO Act 2012 and Section 376 (I) IPC against the accused Sri Ajay Saora. As such accused Ajay Saora is acquitted from the charge u/s 4 of POCSO Act, 2012 and Section 376 (I) IPC and set at liberty forthwith.
- 12. Bail bond executed by the accused and his surety is extended for next six months from today u/s 437-A Cr.P.C.

- 13. Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357 (A) Cr.P.C.
- 14. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 15. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 25^{th} day of January 2019 at Sivasagar.

Special Judge, Sivasagar