SPECIAL SESSIONS. CASE NO. 09 OF 2017

Present: Utpal Prasad, AJS Sessions Judge Karimganj

30.10.2019

ORDER

Statement the accused Jaiful Haque @ Jaidul Haque u/s 313 of the Code of Criminal Procedure, 1973 has been recorded by bringing to his notice the incriminating circumstances obtaining in the evidence and by eliciting his responses thereto. The same has been done in presence of his learned counsel and by putting the questions in Bengali language which he understands and then translating the same into English and reading over the same and explaining the same to the accused in Bengali language.

Perused the case record including the evidence of the prosecution and the statement of the accused recorded u/s 313 of the Code of Criminal Procedure, 1973. Also heard leaned Public Prosecutor and the learned Counsel for defence under section 232 of the Code of Criminal Procedure, 1973.

In this case, the accused has been charged of having committed offence under section 376 of the Indian Penal Code and under section 6, read with section 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012 as he is alleged to have had sexual intercourse with the victim after making a false promise of marriage to her and to have impregnated the victim, alleged to be minor at the time of the incident. The prosecution has examined 4 of the 8 cited witnesses in the charge sheet. The defence admitted the genuineness of the medico-legal injury report of the victim in view of section 294 of the Code of Criminal Procedure, 1973 and, therefore, formal proof thereof, by examining the concerned Doctor, has been disposed with.

The prosecution witness number 1, who is victim herself, has stated that she was having love affair with the accused

and used to have sexual intercourse with him leading to her pregnancy. He has stated that the accused was ready to marry her but as he belongs to a caste considered lower in social hierarchy than the caste she belongs to, the villagers protested against their marriage and therefore, marriage could not be solemnized between them. She has stated that at the time of the alleged incident she was 19.

The father of the victim has stated that one press correspondent of his locality had had a conversation with the victim and then had prepared the 1st information and the said witness had put his signature thereon. He has stated that at the relevant time the victim was aged around 17-18 years. In his cross-examination he has stated that he could know from his wife that whatever had happened was with the consent of the victim. He has also stated that due to financial difficulties, he was not able to admit the victim to school and that he had admitted her in school only on pressure by the village panchayat members when she was around 9-10 years of age. He has stated that after knowing about pregnancy of his daughter, he had gone to the house of the accused and his family members had agreed to marriage of the accused with the victim but due to pressure of the villagers, the marriage could not be solemnized. Even though, with the leave of this Court, the prosecution has confronted this witness with his purported statement given to the investigating officer, the prosecution has not examined the investigating officer and therefore, the said contradictions could not be confirmed and are, therefore, of no evidential value.

Prosecution witness number 3 is victim's father's elder brother and has stated that though he was in the State of Mizoram at the relevant time, on returning from there, he had found the victim pregnant and on being asked, the victim had told him that the accused was behind her pregnancy. He has not stated that the victim had alleged that the accused had had a forced sexual intercourse with the victim. He has stated that at the relevant time the victim was aged around 18-19 years. He has corroborated the victim and her father in stating that the family of the accused and the accused himself were ready to marry the victim but due to social resistance, marriage could not be solemnized. Prosecution witness number 4 has also made the same statements in Court.

Perusal of the medicolegal injury report of the victim does show that the victim was carrying a pregnancy at the time of her medical examination. However, nothing comes out from the said medical report to confirm that the victim was a minor at the relevant time.

A keen perusal of the evidence recorded shows that the prosecution has not put forward any evidence to show that the victim was a minor at the relevant time. The statements by the prosecution witnesses that she was a major at the time sexual intercourse had taken place has not been challenged by the prosecution. The victim and other witnesses have not stated anywhere that the accused had had sexual intercourse with the victim against her consent or against her will. What comes out from the testimony of the victim in that sexual intercourse between them was consensual.

Clearly, even if taken at its face value, the above evidence will not be able to inculpate the accused for any offence. As such, this Court is of the view that the accused is

entitled to an order of acquittal under section 232 of the Code of Criminal Procedure, 1973. Order accordingly.

The accused is acquitted of having committed offences under section 376 of the Indian Penal Code and under section 6 read with section 5(j)(ii) of the Protection of Children from Sexual Offences Act, 1973 and is set at liberty forthwith. His bail bond and surety stand discharged.

With the above, the instant case stands dismissed on contest.

Sessions Judge Karimganj