IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 60 of 2016, U/S 6 of POCSO Act 2012 (Arising out of Nazira P.S. Case No. 247/2016)

State of Assam

-Vs-

Sri Bhadra Das Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Anjal Bharali, Advocate

Date of framing Charge : 08.03.2017

Dates of Evidence : 17.05.2017, 27.06.2018, 04.08.2018

Date of Argument : 27.09.2018 Date of Judgment : 27.09.2018

JUDGMENT

- 1. Prosecution case in brief is that on 29.12.2016, informant Sri Smt. Sonu Das lodged an FIR with O/C, Nazira Model Police Station alleging, inter alia, that having love affairs with her daughter victim 'R' (name withheld), aged about 16 years, accused Sri Bhadra Das frequently came to her house and made cohabitation with the victim and caused her pregnant for six months. It is also alleged that on knowing this incident from the victim, she asked the accused to marry the victim, but even making promise, accused did not turn up. On this, due to non-accepting the victim, the informant lodged the instant FIR.
- On receipt of the FIR, Nazira P.S. Case No. 247/2016, U/S 4 of POCSO Act, 2012 was registered. During investigation, accused Bhadra Das was arrested and produced him before this court for judicial custody. The victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 4 of POCSO Act, 2012 against the accused person.

- 3. On receipt of charge sheet, cognizance of offence u/s 6 of POCSO Act was taken and after furnishing copy to the accused and after hearing both the sides, vide order dated 08.03.2017, charge U/S 6 of POCSO Act, 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution has examined three witnesses including informant and victim. Considering the nature of the evidence of victim and informant, examination of accused u/s 313 Cr.P.C is dispenses with.
- 4. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. Anjal Bharali, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINT FOR DETERMINATION ARE

5. (I) Whether prior to filing of FIR on 29.12.2016, victim 'R' was subjected to aggravated penetrative sexual assault by the accused?

DECISION AND REASONS THEREOF

- 6. PW-1 Smt. Sonu Das, the informant and mother of the victim in her evidence deposed that on 29.12.2016, she lodged Exbt. 1 FIR due to not accepting her daughter even making promise and keeping relation with her. After 2 months of filling FIR, accused performed marriage with her daughter (victim R) and presently they are living as wife and husband. Recently, victim has delivered one male child. In her cross-examination, she admitted that due to misunderstanding, she lodged the FIR. Presently they have settled the dispute.
- 7. PW-2 Smt. Latika Das in her evidence deposed that during investigation by police, she came to know that victim R was pregnant. She saw the accused while coming to the house of victim. After filling of the case, accused performed marriage with the victim and presently they are living as wife and husband. In her cross-examination she admitted that she did not ask the victim about the incident.

- 8. PW-3 victim R in her evidence deposed that accused Bhadra Das is her husband. Her present age is about 20 years. Having love affairs with accused, they made frequent cohabitation and she got pregnant through the accused. While she was pregnant for five months, accused decline to marry her. On this her mother filed this case. On filling this case, Police took her for medical check up and also in court. She gave statement in court. Exbt. 2 is her statement given in court. After filling of this case, before child birth, accused agreed to take her as his wife and they started conjugal life by performing social marriage. Presently she has no grievances against the accused. In her cross-examination she admitted that accused did not cohabit with her by force. Her mother filed this case due to misunderstanding. Presently she is living peaceful conjugal life with the accused. She prayed for acquittal of the accused.
- 9. Basing at the above evidence on record, so far the offence of penetrative sexual assault is concerned, from the evidence of PW 3 the victim, it appears that she was presently aged as 20 years. She admitted of having love affairs with the accused and of her physical relation with the accused on her consent. From the evidence of victim and PW 1, it appears due to nonaccepting the victim while she was pregnant for five months, PW 1 lodged the FIR. From their evidence it also reveals that after filing of the FIR, accused performed marriage with the victim and presently they are living as wife and husband and now they have no grievances against the accused. In cross examination both PW 1 and PW 3 clearly stated that due to some misunderstanding PW 1 has lodged the FIR. Presently they have settled the dispute and prayed for acquittal of the accused from this case. In cross PW 3 categorically stated that accused did not cohabit with her by force. So from the above facts on record, it appears that there was no material whatsoever regarding penetrative sexual assault by the accused.
- 10. Considering all above, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 6 of POCSO Act, 2012 against the accused Sri Bhadra Das. As such, accused Sri Bhadra Das is acquitted from the

charges U/S 6 of POCSO Act, 2012 and set at liberty forthwith.

- 11. Bail bond executed by the accused and his surety are extended for another six months from today U/S 437-A Cr.P.C.
- 12. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.
- 13. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 14. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 27th day of October, 2018 Sivasagar.

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

APPENDIX

- 1. Prosecution witnesses:
 - PW 1 Smt. Sonu Das (Informant)
 - PW 2 Smt. Latika Das
 - P.W.3 Victim 'R'
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 Statement of the victim given u/s 164 Cr.P.C.

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