

IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS
Special Judge,
Sivasagar.

Spl. (P) Case No. 53 of 2017, U/S 4 of POCSO Act and Sec. 506 IPC
(Arising out of Sivasagar P.S. Case No. 860/2017)

State of Assam

-Vs-

Sri Pramod Das Accused

APPEARANCE:

For the prosecution	:	Mr. Dhiraj Dutta, P.P.
For the accused	:	Mr. A.K. Bora, Advocate (Legal Aid Counsel)
Date of framing Charge	:	25.01.2018
Dates of Evidence	:	22.02.2018
Date of Argument	:	22.02.2018
Date of Judgment	:	22.02.2018

J U D G M E N T

1. Prosecution case, in brief, is that on 22.10.2017, informant Smt. Tuni Das lodged an FIR with O/C, Sivasagar P.S. alleging, inter alia, that accused Pramod Das has kidnapped her daughter victim 'L' (name withheld) from her house and kept the victim in his house at Polashani Gaon under Sivasagar PS as wife.

2. On this FIR, Sivasagar P.S. Case No. 860/2017, U/S 344 IPC R/W Section 6 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.

3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 6 of POCSO Act, 2012 as the case is exclusively triable by the court of Special Judge, Sivasagar.

4. After furnishing copy to the accused persons, vide order dated 25.01.2018, charges U/S 4 of POCSO Act, 2012 and Section 506 IPC have been framed against the above named accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses including the informant and the victim.

5. Examination of accused U/S 313 Cr.P.C. is dispensed with, considering the nature of evidence of victim and elder sister of the victim.

6. I have heard argument of learned P.P. Mr. Dhiraj Dutta and Mr. A.K. Bora, learned legal aid counsel for the defence and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE -

7. (I) Whether on and from 22.10.2017, i.e. during Puja festival of 2017, accused has committed penetrated sexual assault on the victim 'L'?
- (II) Whether during her stay with accused, he criminally intimidated the victim 'L'?

DECISION AND REASONS THEREOF

8. PW-1 Smt. Tuni Das, mother of the victim, in her evidence deposed that about 4-5 years back, the victim left school after reading upto class VIII and presently victim is aged about 18 years. The victim went to the house of her 2nd daughter Buli Das for stay. While she was staying for there about three months, somebody has informed her that accused Pramod Das

kept the victim as wife. On this out of anger, she lodged FIR at Sivasagar PS. After filling of this FIR, police brought back her daughter and on asking she reported that accused did not keep her as wife and that she filed the FIR wrongly. As such she is not willing to prosecute this case by adducing further evidence. In her cross-examination she admitted that she cannot say about the contents of the FIR. She cannot say who wrote the FIR. She has no objection in acquittal of the accused from this case.

9. PW - 2 the victim L in her evidence deposed that presently she is aged about 18 years. In the last Durga Puja she went to the house of her 2nd sister Buli Das for stay. While she was staying there about one month, somebody has informed her mother that accused Pramod Das kept her in his house as wife. On this without asking her about the incident, her mother lodged FIR at Sivasagar PS. After filling of this FIR, police brought back her to her paternal home and on asking she reported that accused did not keep her as wife. Accused being elder brother of her brother-in-law was simply joking that he will marry her. Accused did not misbehave her while she stayed at the house of elder sister. In her cross-examination the victim has admitted that she used to call the accused as brother-in-law. Accused used to share same court yard with her sister. Except joking accused did nothing with her.

10. PW-3 Smt. Buli Das, elder sister of the victim, in her evidence deposed that accused Pramod Das is the elder brother of her husband and live with them in joint family. About 4-5 months back, victim came to her house for stay to look after her infant child. During stay of the victim in her house, while joking accused used to say her that he will marry the victim. On this her mother without asking anybody, lodged an FIR. After filling of this FIR, police took the victim from her house and handed over to her mother. Accused never misbehaved with victim.

11. From the above evidence on record, it appears that due to

misunderstanding PW 1 lodged the FIR against the accused and after filing of this FIR, police brought back the victim. From the evidence of PWs it appears victim went to look after the infant child of her sister and that during stay of the victim in the house of P.W.3, accused while joking uttered that he will marry the victim. On hearing this, without asking anybody, PW 1 lodged the FIR. From the evidence of P.W.2 and P.W.3 it depicts that accused neither kept confined the victim nor misbehaved the victim in any manner. From the above evidence as discussed, it is clear that there was no material whatsoever regarding penetrative sexual assault by the accused or of criminal intimidation.

12. Considering all 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 506 IPC against the accused. As such, accused Pramod Das is acquitted from the charges U/S 4 of POCSO Act, 2012 and Section 506 IPC and set at liberty forthwith.

13. Issue release order to Superintendent District Jail, Sivasagar forthwith for release of the accused from Jail. As the accused is in Jail, no order is passed U/S 437-A Cr.P.C.

14. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 A Cr.P.C.

15. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.

16. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 22nd day of February, 2018 Sivasagar.

Special Judge,
Sivasagar:

APPENDIX

1. Prosecution witnesses :
P.W.1 – Smt. Tuni Das (Informant)
P.W.2 - Victim L
P.W.3 - Smt. Buli Das
2. Defence witnesses - None
3. Court witnesses - None
4. Exhibits by prosecution - None

Special Judge,
Sivasagar: