IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sess. Spl. Case No.27/2015 U/S 354(A) of IPC, read with Section 12 of POCSO Act.

Present : Md. M. Ahmed, Sessions Judge, Morigaon.

State of Assam

Vs

Sri Tapan Hira.

Appearance for the Parties

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. U. C. Roy, Advocate,

Date of recording evidence :-15.02.2016.

Date of Argument :-15.02.2016.

Date of Judgment :-01.03.2016.

JUDGMENT

1. Filing of an F.I.R. by one Bhogali Hira of village Udmari under Jagiroad P.S. in the district of Morigaon with the then O/C Jagiroad P.S. on 19.07.2015 has given rise to this prosecution case. In this F.I.R., it is alleged by the informant that his son, the accused by the name Tapan Hira was a person of bad character, he was habitual drunker, his wife is no more in this world and he has one daughter namely, Miss – X (real name is concealed to save the victim from infamy and ignominy), the victim of the instant case then aged about 14 years. It is alleged by the prosecution that the present accused being the father did not take care of his own daughter and he tried to have forcible sex with his own daughter on 18.07.2015 at around 7 P.M. At that time the accused being heavily drunk came to his house and tried to commit rape upon

his own daughter under the influence of liquor. Then, the victim raised hue and cry and the informant on hearing hue and cry of the victim went there and other village people also assembled at the spot and they all saved the victim from the clutches of the accused. Then, the victim narrated the entire matter before the informant and then the informant came to learn that last since three months the accused repeatedly tried to do such act but failed in his attempts to have forcible sex with her and each time his design was frustrated by the victim.

On receipt of this F.I.R., O/C Jagiroad P.S. registered a case vide Jagiroad P.S. Case No.298/15, U/s 376/511 IPC, read with Section 12 of POCSO Act against the afore-named accused and investigation was set in motion.

During the course of investigation, the I.O. visited the place of occurrence, arrested the accused, seized one school leaving certificate of the victim, subjected the victim to medical examination, examined the materials witnesses and uponconclusion of investigation, the I.O. having found sufficient incriminating materials submitted the charge-sheet against the afore-named accused for alleged commission of offences U/s 354 (A) IPC, read with Section 12 of POCSO Act. At the time of filing charge-sheet, the accused was languishing in jail and subsequently, he got court bail.Copies of relevant documents were furnished to him. Thereafter, this Court having heard learned Counsel of both sides and basing upon the materials on record, framed charge U/s 354 (A) IPC, read with Section 12 of POCSO Act and read over and explained the particulars of charge to the accused to which he absurd guilty and claimed for tried.

2. Point for determination:

(i) In the instant case, it is to be determined that if the present accused on the eventful day i.e. on 18.07.2015 at around 7.00 P.M. at village Udmari under Jagiroad P.S. in the district of Morigaon, embraced the victim Miss – X, a minor girl, his own daughter and did physical contact and advances involving unwelcome and explicit sexual overtures and at the same time he committed lascivious sexual assault on the victim by forcibly molested her sexually.

- 3. The prosecution in this case has examined its most vital witness namely, PW-1, the informant and PW-2 the victim. But none of themhave supported the prosecution case on material aspects. As such, examination of the accused U/s 313 Cr.P.C. was found to be redundant and was dispensed for ends of justice. The accused declined to adduce defence evidence.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

- 5. In this case it is alleged by the prosecution that on the eventful night the afore-named accused embraced the victim, his own daughter with ill-intention and also committed lascivious sexual assault by forcibly molesting her sexually.
- 6. The prosecution in this case examined the said victim as PW-2. She in her evidence remained silent if the accused did anything as alleged by the prosecution. She has simply stated in her evidence that her father (the accused) used to create disturbance in the house after consuming liquor and he used to abuse her and also assault her and she reported this matter to her grandmother and accordingly, a case was filed against her father.

Upon critical analysis of the evidence of PW-2, it appears that though the prosecution has claimed that the accused cast an evil eye upon his own daughter and tried to sexually assault her, but her evidence negates this allegation. She simply stated in her evidence that her father used to create disturbance in the house under the influence of liquor and he has badmouthed her and also used to assault her.

7. PW-1, the informant also deposed likewise. According to him, the accused is his own son. The occurrence took place around 5/6 months ago. The

accused is a habitual drunker and he used to create disturbance by consuming liquor. The wife of the accused had died. After death of his wife, the accused did not take care of his children. This witness has further stated that the victim is his own daughter and as the accused did not take proper care of the children including the victim, PW-1 filed Ext.1 the ejahar. However, he has no knowledge regarding the contents of the ejahar, as it is scribed by other person.

From the evidence of PW-1, it is found that he categorically stated that he filed the ejahar, as the accused create disturbance under the influence of liquor.

- 8. Thus, from the evidence available in record, it transpires that both the materials witnesses of the prosecution have refused to support the prosecution case as regard the fact that the accused had an evil eye upon his own daughter. Rather from the evidence available on record has simply suggest that the accused was a habitual drunker and he used to create disturbance after consuming liquor and his wife is no more in this world. He had little children, however, he failed to take proper care of them and used to ill-treat his own children and that was the principal reason for filing this case.
- 9. That being the position, this Court is of opinion that the prosecution has failed to establish the case beyond all reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 354(A) IPC, read with Section 12 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment delivered in the open Court on this $\mathbf{1}^{\text{st}}$ day of March, 2016 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1 :- Sri Bhogali Hira.
- 2. PW-2 :- Sri Sagarika Hira.
- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit:
- 1. Ext.1, the ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.