Present: Utpal Prasad, AJS Sessions Judge Karimganj

20.11.2019

ORDER

Statements of the accused Anupam Biswas has been recorded u/s 313 of the Code of Criminal Procedure, 1973 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 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.

The accused is facing trial for charges under section 376(1) of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012. It has been alleged that on 12.07.2016, *Chaturtha Mangal* ceremony was being held in the house of the informant, with whom the victim girl used to live, and at around 7 PM to 8 PM, in the 1st floor of the house of the informant, when the victim had gone to the room in which edibles including *Papad* were kept, to bring *Papad*, someone had switched the lights off and had committed rape on her. The case of the prosecution is that the accused was heading a team of caterers in the said ceremony for dining arrangements. On lodgement of the 1st information by the informant, Karimganj police station

case number 597 of 2016 was registered and after investigation, charge sheet was submitted against the accused alleging commission of offence under section 376(2)(i) of the Indian Penal Code and in due course, charges, as aforesaid were framed against him.

The prosecution has examined on the 10 witnesses in this case to bring home the charges levelled against the accused.

During investigation, medicolegal examination of the victim was also conducted. The Doctor conducting medical examination of the victim, examined as prosecution witness 7, has stated that age of the victim was less than 18 years and that the victim had given the history to her that on 12.07.2016, at around 7:30 PM, the accused had committed rape on her and that the victim had told her guardians about the same on 27.07.2016. According to her, no sign of violence or sexual intercourse was found on the person of the victim. Victim has also stated her age to be less than 18 at the time of the incident. Of course, she has stated that even though she had studied up the class V, she was not able to recall the name of the school because of which, no birth certificate or school certificate showing her date of birth could be proved by the prosecution.

The victim, examined as prosecution witness number 3, has stated that at the relevant time, when she had gone to bring *Papad* from a room, and had entered into the room, someone had switched the lights of the room off and had then committed rape on her and that in the following morning, she had informed the informant's wife, examined as prosecution witness number 8, about the

incident. She has stated that she is not in a position to say if the present accused is a person who had committed rape on her. She has stated that at the time offence was committed against her, it was done.

The informant has stated that after the Chaturtha Mangal ceremony, he and other family members had found that the victim was not in a proper frame of mind and was not taking her meals properly whereafter the informant's wife had asked the victim about the reason therefor and the victim had told the informant's wife that on the day of the aforesaid celebration, in the evening, when it was dark, in a room on the 1st floor, someone had switched the lights off and had committed rape on her. He has stated that the victim had stated the same thing to him as well. He has stated that the accused was the head of the catering group and when asked the accused had told him that someone from his group could be the culprit and that finding no alternative, he had taken the victim and the present accused to the police station and had lodged the 1st information. In his cross-examination he has stated that the victim had not named the present accused as the culprit and that as the informant had given the accused the contract of catering, he had lodged the case against the present accused.

Prosecution witness number 1 and 2 of members of the catering group headed by the accused. They have stated that in all there were 13 members in the group and after the lunch was over, they and the accused had remained in the house of the informant with other members of the group leaving the place. They have stated that they had remained there to arrange their items. The testimonies of

these 2 witnesses does not do any good to the case of the prosecution.

Prosecution witness number 5 has stated that the victim had told that someone had molested her during the ceremony but was not able to identify the culprit. Prosecution witness number 6 has stated that after 7 days of the incident, he came to know that the victim had been raped by someone whereafter the informant had lodged case against the present accused. Finding these 2 witnesses not supporting the case of the prosecution, the prosecution confronted them with their purported statement made before the investigating officer and took the stand that both of them had seen the victim identifying the present accused after watching the CCTV footage in the house of the informant. However, the investigating officer has not supported this version of the prosecution inasmuch as he has not stated that he had seen any such CCTV footage. Of course, he has stated that these 2 witnesses had made such statements. Nevertheless, in absence of any corroboration, the same does not carry any evidential weight.

The informant's wife, examined as prosecution witness number 8 has stated that when shown to the victim, the victim had stated that the accused could be the person committing rape on her though she was not categorical about the same. During cross-examination she has stated that the victim was not able to clearly identify the miscreants and had only noticed some of the features of his as it was dark at that time and place of the incident. Similar is the testimony of the prosecution witness number 9 where stated that even though the accused was shown

to the victim, she was not able to identify him categorically. She has stated that the victim had stated that the accused could be the person committing rape on her.

Perusal of the testimony of the investigating officer shows that there is nothing which can be said to incriminate the accused.

The aforesaid shows that even if taken at its face value, it cannot lead to conviction of the accused for any offence including the offences he has been charged with. Clearly, the instant one is a case of no evidence against the accused. As such, it is held that the accused is entitled to an order of acquittal under section 232 of the Code of Criminal Procedure, 1973.

In the result, the accused is acquitted of the charge under section 376(1) of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012 and is set at liberty forthwith. His bail bond and surety shall stand discharged with immediate effect.

With the above the instant case stands dismissed on contest.

Sessions Judge Karimganj