IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M), AT GUWAHATI

SESSIONS CASE NO.183/17

(Under Section u/s 354(D)/506 of IPC R/W Section 12 of the POCSO Act)

Present: S.P. Moitra,

Sessions Judge

Kamrup(M), Guwahati

State of Assam

-Vs -

Bablu Roy

.....Accused Person

Appearance for the Parties:

Advocate for the State : Sri H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Sri Kankan Das, Sri Kush Ram Boro,

Learned Defence Counsels

Date of recording evidence: 09.02.2018

Date of Argument : 23.02.2018

Date of Judgment : 06.03.2018

J U D G M E N T

1. Brief facts of the case of the prosecution, as emanated from the written FIR (Ext.1), lodged by Smti. Munu Mandal, are that accused person named above had been harassing the victim, her daughter (name withheld) with an intention to compel her to love him. The informant requested him on many occasions to remain away from her daughter, but instead of remaining away, he started to harass the victim more. As the informant tried to resist him, he even threatened the informant. On 25.06.2017 in the evening, the accused person came to the house of the informant in search of her daughter and as she tried to

resist, the accused person uttered filthy language towards her and also towards her mother and thereafter left the place after giving threat.

- 2. On the basis of the said information, Basistha P.S Case No.540/17 was registered u/s 354(D)/506 of the IPC, r/w Section 12 of the POCSO Act and was taken up for investigation. In course of investigation, the accused person was arrested and was forwarded to judicial custody. The statement of the victim was also recorded u/s 161 of the Cr.P.C. After completion of investigation of the case, accused person was charge sheeted u/s 354 (D)/506 of the IPC, r/w Section 12 of the POCSO Act.
- The accused person who was on Court bail entered appearance before the Court. Copies of the relevant documents were furnished to the accused in compliance to provisions of Section 207 of the Cr.P.C. On consideration of charge, charge u/s 354(D)/506 of the IPC, r/w Section 12 of the POCSO Act was framed. Charge was read over and explained to the accused to which he pleaded not guilty and stood to face the trial.
- **4.** To bring home the charge, the prosecution examined, as many as, 4 witnesses on its behalf and also exhibited one document. The defence plea was of complete denial of any guilt. The statement of the accused has been recorded u/s 313 of the Cr.P.C. The defence adduced no evidence on its behalf. I heard argument advanced by the Ld. Counsels for the parties.

5. Points for Determination

i) Whether on 25.06.2017 in the evening at House No.3, Udaynagar, Koinadhara, Guwahati, the accused person used criminal force to Smti. Munu Mandal intending to outrage her modesty and also threatened her with intent to cause her harm?

ii) Whether, the accused person named above caused sexual harassment to the daughter of the informant?

Decisions and Reason thereof

- **6.** I have gone carefully through the entire evidence on record and the materials placed before me. For the sake of convenience and brevity, the evidence on both the points are taken up together for discussion and decision.
- 7. PW.1 Munu Mandal is the informant of the case and her testimony reveals that on 25.06.2017, the occurrence took place at about 8 p.m. She testified that on that day her daughter was not in the house and then accused person went there and asked her about her daughter. She further testified that the accused person abused her in filthy language and thereafter went to the garage of the husband and also abused him in filthy language. It is stated that the accused person abused her husband by saying that her husband is a man of bad character and if he could become the father of a girl, he ought to have known, how to control the daughter. She stated that the accused person also threatened her husband by saying that he would give a slap. It is further stated that the accused person used to disturb her daughter from class 7 and they tried to restrain him on many occasions and even gave a G.D Entry at the police station. She added that instead of all these, the accused person did not stop. She stated that as she tried to convince him by saying that her daughter was studying and she should not be disturbed, the accused person did not stop. She added that as threat was given, she lodged the FIR at Basistha P.S and proved Ext.1 as her FIR. During cross examination, the witness admitted that while the accused person was assaulting her husband in the garage, she was not present. She added that one of her neighbour, namely, Piya told her. She added that her husband also reported her about the incident. She further testified that her said daughter was born on 22.09.1999. But although the witness stated that her husband was threatened by the accused person and the accused person also

uttered obscene words towards her husband, her husband never came before the Court to adduce evidence. As such, said facts remained uncorroborated. Even so called Piya did not come to the Court to adduce evidence to prove the same. Evidently, PW.1 did not see the occurrence on her own eyes and as such her evidence regarding the occurrence in the garage remains hearsay and as such not admissible in evidence.

- 8. PW.2 Namita Talukdar stated a complete different story in her evidence. She stated that she heard from the informant that on 25.03.2017, her (informant) daughter was found missing and as she herself along with her sister went in search of the daughter, the accused person misbehaved with them. Thus, the entire evidence of PW.2 has no connection with any occurrence allegedly took place on 25.06.2017 and the story is also completely different.
- **9.** PW.3 Sumi Das is the elder sister of the informant and she also did not see the occurrence. However, she stated that her sister told her that the accused person had misbehaved with her and her brother-in-law also told her that the accused person had misbehaved with him. Thus, evidently she was also not present at the time of the occurrence.
- 10. PW.4 is the victim herself (name withheld). She testified that she knew the accused person and developed love for him. She specifically stated that the accused person did not misbehave with her parents. She also added that he was in love with her and as her parents were objecting in their relation, he only scolded them. She specifically stated that nothing happened as stated in the FIR. Thus, she failed to support the prosecution story. Although in the FIR, it is specifically stated that the accused person not only uttered obscene language towards informant, but also uttered obscene language towards her mother Manju Das was not examined by prosecution.

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11. On careful scrutiny of the entire evidence and materials on record, I find

that the prosecution miserable failed to adduce cogent corroborative evidence

disclosing the guilt of the accused person. The evidence of the informant did not

get any corroboration from any corner including her husband. Her evidence

remained fully uncorroborated. Even her evidence did not utter a single word

regarding outraging her modesty and as such no ingredient of Section 354 (D) of

the IPC could be proved by the prosecution. There is also no whisper regarding

the sexual harassment of the victim girl, rather the victim herself narrated a

complete different story regarding so called threatening or intimidation. I find

that there is nothing in the evidence of PW.1 that she was threatened by the

accused. So called threatening given to her husband was not proved by her

husband or anyone who had seen it.

12. In view of the discussions made above, I am constraint to hold that

accused Bablu Roy is not guilty of offence punishable u/s 354 (D)/506 of the IPC,

R/w Section 12 of the POCSO Act and accordingly he is acquitted and set at

liberty forthwith. Bail bond furnished on his behalf, will remain in force for the

next 6 months.

13. Signed, sealed and delivered in the open court on this 6th day of March,

2018 at Guwahati.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Ext-1: F.I.R

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1 : Smt. Munu Mandal

PW-2: Smt. Namita Talukdar

PW-3: Smt. Sumi Das

PW-4 : Smt. Barnali Mandal

(F) Defense Witnesses: Nil

(G) Court Witnesses : Nil.

(S.P. Moitra)

Sessions Judge, Kamrup(M), Guwahati