IN THE COURT OF THE SESSIONS JUDGE, KARIMGANJ AT KARIMGANJ

Present: Utpal Prasad. AJS Sessions Judge

Karimganj at Karimganj.

SPECIAL SESSIONS CASE NO. 13 OF 2015

u/s. 506/376(2)(i) of the Indian Penal Code, 1860; under section 66(E)/67(B) of the Information Technology Act, 2008; under sections 4/8/14 of the Protection of Children from Sexual Offences Act, 2012

State of Assam

-Vs-

Mawdud Hussain Choudhury S/o Monsur Hilal Choudhury R/o Village Abdullahpur P.S. Nilambazar

Date of framing of charge : 19.09.2016

Dates of recording of

Prosecution's evidence : 29.03.2017.

Date of examination of the

accused u/s 313 of Cr. P. C. : 04.04.2017.

Date of hearing of argument : 10.04.2017.

Date of judgement : 10.04.2017.

LEARNED ADVOCATES WHO APPEARED FOR THE PARTIES

For the State : Mr. N. D. Roy, Additional Public Prosecutor

For the accused : Mr. A. Rashid, Advocate.

JUDGEMENT & ORDER

1. The accused Mawdud Hussain Choudhury is present with his learned counsel.

The accused has submitted through his learned counsel that he does not

desire to lead any defence evidence. In view of this, the arguments have been heard. Learned counsel for the defence has submitted that apart from the hearsay evidence of the mother of the victim that the victim had stated to her that the aforesaid accused had committed rape on the victim, there is no incriminating statement in the evidence worth name in the case and therefore, the accused may be acquitted.

- Mr. N. Dutta Roy, the learned Additional Public Prosecutor, who has appeared
 on behalf of the State as learned Public Prosecutor is on leave, has fairly
 submitted that evidence on record is not sufficient to convict the aforesaid
 accused.
- 3. In the instant case, the accused Mawdud Hussain Choudhury has been charged of having committed offences under sections 506/376(2)(i) of the Indian Penal Code; under section 66(E)/67(B) of the Information Technology Act, 2008; and under sections 4/8/14 of the Protection of Children from Sexual Offences Act, 2012.
- 4. The father of the victim, examined in the instant case as the prosecution witness No 2, had lodged first information against the aforesaid accused alleging that the accused had abducted his daughter on the strength of weapons and had committed rape on her and had videographed the entire incident and later, had shared the videos in electronic form with several persons. After recovery of the victim, she was medically examined and on examination, was found to be aged between 14 and 17 years. As during investigation the police found sufficient evidence against the aforesaid accused, he was charge sheeted for having committed offences under sections 376/506 of the Indian Penal Code; under sections 4/8/14 of the Protection of Children from Sexual Offences Act, 2012; and under sections 66(E)/67(B) of the Information Technology Act, 2008. On finding materials, the charges were framed as aforesaid and the aforesaid accused having pleaded not guilty thereto, he has been put on trial.
- 5. During trial, the first informant, the victim and her mother were examined in

the case even though the charge sheet listed 10 witnesses in all. The prosecution having closed the evidence, the accused was examined under section 313 of the Code of Criminal Procedure, 1973.

- 6. Based on the materials on record, the following points for determination arise for a decision by this court:
 - i. Whether the aforesaid accused committed rape on the victim and threatened her of dire consequences in the event she disclosed the incident to any one?
 - ii. Whether the accused had video graphed/photographed the incident of rape and had disseminated and transmitted/published the materials in electronic form violating the privacy of the victim?
 - Whether the accused had committed any offence under Protection of Children from Sexual Offences Act, 2012
- 7. All the aforesaid questions are taken up together for decision. The prosecution witness No 1, i.e., the victim, has stated in her testimony that the accused was her schoolmate and two standards senior to her and they had a relationship. She has stated that one day she had gone with the accused for spending time when the accused had taken some closed photographs of theirs and had shown these photographs to others. She states that as the village people came to know about the same, they informed her parents and that her father having become angry because of the accused being a Muslim, on advice by other village persons, he lodged a case against the accused. She has stated that the village persons had pressurized her to give statement to the police, to the Magistrate, and to the doctor implicating the accused, because of which she had implicated the accused during investigation. She states that she herself had not seen any photograph. In cross examination, she denies that the accused had not taken any photographs of hers and had not shown the same to anyone else. It is to be noted that she has not stated that the accused had abducted her or had any forced physical relation with her, Even a consensual sexual intercourse

has not been alleged by the victim. She has also not stated that the photographs taken were obscene. Though she has deviated from her statement given to the investigating officer, to the Judicial Magistrate and the doctor, the prosecution did not chose to cross examine her and no such prayer was made before the Court which means that the prosecution accepts the account of the incident given by her.

- 8. The prosecution witness No 2, informant in this case and the father of the victim has stated that the accused used to harass her daughter and on pressure by the village persons he had filed a case against him as he had no alternative. He states that on repeated questioning, his daughter had stated that she had gone with the accused of her own accord. He states that the persons of the locality had told him that the accused had lifted his daughter forcibly on the basis of which he had lodged the first information. He further states that he had given the statement to the police before her daughter had disclosed the real facts to him and only on the basis of the information received from the village persons, he had incriminated the accused in the first information and in his statement to the police.
- 9. The mother of the victim examining herself as P. W. 3 has stated that the village persons had stated to her and her husband that one Muslim boy used to harass her daughter and that the said boy had committed rape on her daughter whereafter the prosecution witness no. 2 had lodged the case against the accused. Though she has stated that even though the victim, initially, had told her that the accused had committed rape on the victim, later, she had told her mother that she had gone with the accused of her own accord and that the accused had not committed any wrong with her. She further states that she gave statement incriminating the accused to the investigating officer under pressure from the village persons.
- 10. As the three key witnesses in the case did not implicate the accused, the prosecution decided not to lead further evidence in the case.
- 11. From the above, it is seen that all the three witnesses have stated that the

case against the accused was lodged under pressure from the village persons and on the basis of misinformation. The victim had categorically stated that she was having a relationship with the accused and had gone with him for spending time and that the accused has taken some closed photographs of theirs. It is clear that the same was with her consent. She has categorically stated that she had not seen those photographs and that the accused had not committed any wrong to her. The other two witnesses have also deposed on the same line. This shows that the prosecution has not been able to prove the charges levelled against the accused person in any manner. The charges levelled against the accused do not seem to be worthy of belief even on balance of probability. In view of the above, the aforesaid accused is acquitted of the charges under sections 376/506 of the Indian Penal Code; under sections 4/8/14 of the Protection of Children from Sexual Offences Act, 2012; and under sections 66(E)/67(B) of the Information Technology Act, 2008 and is set at liberty forthwith. However, his bail bond and surety shall remain extended till the next 6 months. The instant case, therefore, stands dismissed on contest.

12. Send a copy of this judgment to the learned District Magistrate, Karimganj District.

Pronounced in the open court in presence of the accused and his learned counsel on this the 10th day of April 2017.

Sessions Judge Karimganj at Karimganj.

APPENDIX

Prosecution Witnesses:--

P. W. 1: Victim (name nor disclosed)

P. W. 2 : Shri Samiran Nath P. W. 3 : Shrimati Pratima Nath

Prosecution Exhibits:-

Exhibit 1 : Statement of the victim u/s 164 of the Code of Criminal

Procedure, 1973.

Exhibit 2 : First Information.

Exhibit 3 : Printed form of the first information report.

Material Exhibits:- NIL

Defence Witness:- NIL

Defence Exhibit :- NIL.

Court Witness:- NIL.

Sessions Judge Karimganj at Karimganj.