IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.20/2016 U/S 376 (2)(i) IPC, R/W Section 4 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Sh. Pradip Dewri

..... Accused Person

Date of Charge :- 29.09.2016.

Date of recording evidence :- 29.05.2017 & 14.07.2017.

Date of Argument :- 14.07.2017.

Date of Judgment :- 15.07.2017.

Appearance for the Parties

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

Advocate for the accused:- Mr. Umesh Ch. Roy, Ld. Advocate.

Mr. P. Mazumdar, Ld. Advocate.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 17.03.2014, at around 3.00 PM, the accused namely, Sh. Pradip Dewri, S/o Sh. Gajen Dewri of village Dighalbori Gaon, Parjari under Morigaon district, had forcefully committed rape upon the minor granddaughter of the informant aged about 4/5 years and fled away from the house when no any other person was present at the house. When the informant along with village people brought the accused to his house then the accused person confessed his guilt.

On the same day i.e. on 17.03.2014, the informant went to the Morigaon PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Morigaon PS

registered a case vide Morigaon PS Case No.99/2014, U/s 376 (2) (i) of IPC r/w Section 4 of the POCSO Act.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence and drew sketch map of the place of occurrence and seized one undergarments and a frock of the victim from the P.O. The I.O. examined the material witnesses and also got the victim medically examined. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the abovenamed accused with allegation of offence punishable U/s 376 (2)(i) IPC r/w Section 4 of the POCSO Act showing the accused person as arrested. Accordingly, the accused person was produced before the lower Court below and he was let off on court bail and he was also furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court.

On receipt of the case record, having heard Ld. Counsel of both sides and basing upon the materials on record, framed charge U/s 376 (2) (i) IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused person to which he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused person on the eventful day i.e. on 17.03.2014 at about 3.00 PM at village Parjari under Morigaon PS, committed rape upon the minor granddaughter of the informant aged about 4/5 years?
- (ii) Whether the accused person on the same day, time and place, committed penetrative sexual assault upon the minor granddaughter of the informant?
- **3.** In this case prosecution has examined 3 (Three) PWs including the most material witnesses of this case, the informant, who is the grandfather of the victim as PW-1 and the father of the victim girl as PW-3. But their evidence did

- **4.** not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for the ends of justice. The accused declined to adduce defence evidence.
- **5.** I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

6. <u>DISCUSSION, DECISION AND REASONS THEREOF</u>

In this case, it is alleged by the prosecution that on the eventful day the above-named accused person committed rape upon the minor granddaughter of the informant.

(a) To prove this fact, the prosecution has examined PW-1, Bandana Dewri, she in her evidence has stated that the informant was her father and the victim is her niece. At the time of occurrence of the incident victim was 4 years old. At that time Holi festival was going on and children's were busy in playing Holi near her house. She does not know as to why informant has lodged the case against the accused person and she does not know about the occurrence of the incident.

Her cross-examination was declined by the defence.

(b) PW-2, Bhabiram Dewri, in his evidence has stated that, he is the informant of this case and the victim girl is his granddaughter. He knows the accused person. At the time of occurrence of the incident the victim was 3 years old. The accused person is from his locality. At the time of incident, he was not present at the house. After coming to his house, he saw hue and cry for the incident at his house. Many people were gathered there. He heard that accused person was putting colours to the children on the occasion of Holi. The accused person also put colour to his granddaughter (victim) for which she cried and the village people suggested him to lodge a case against the accused person. Therefore, he lodged the case. Ext.1 is the ejahar and Ext.1 (1) is his signature.

The said ejahar was written by somebody else but he simply put his signature on it.

During cross-examination, he stated that he lodged the case out of the pressure of the village people. He exactly does not know about the occurrence of the incident.

(c) PW-3, Sh. Pranjal Bordoloi, in his evidence has stated that informant is his father-in-law and the victim girl is his daughter. He knows the accused person, who is from their locality. The ejahar was lodged about 2/3 years ago. On the date of the occurrence of the incident, Holi was going on. At that time like many others, the accused person also visited the house of his father-in-law to celebrate holi. On that day, the accused person put colour on the face of his daughter but his daughter started crying when the accused person put colour on her face However, the neighboring people thought that the accused wanted to do immoral act on his minor daughter. Thereafter, the village people pressurized his father-in-law to lodge a case against the accused person. He was not present at that time at the house of his father-in-law. He came to know about the incident later on. However, his daughter did not say anything against the accused when he asked his daughter. He understood that his minor daughter got frightened and cried when the accused put colour on her face.

During his cross-examination, he stated that later on, he came to know that the accused was innocent. He did not commit any immoral act with his daughter. At present his daughter is more than 5 years old and she is not capable enough to depose before the court. The case was lodged out of misunderstanding.

7. Thus, we have found that none of the witnesses including the most vital witnesses as PW-2 and PW-3 (i.e. the informant and the father of the victim respectively) examined by the prosecution have not stated anything as regards to committing rape and penetrative sexual assault being allegedly committed by the accused.

- 8. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the informant, who is the grandfather of the victim and the father of the victim have clearly stated that they only heard about the incident from the neighboring people that the accused person came and put colour on the face of the victim on the occasion of Holi festival. As both the vital PWs i.e. PW-2 & 3 specifically stated that they were not present at the time of incident and the village people pressurized them to lodge the case. However, it is revealed from the evidence of all the witnesses that nobody have seen the actual occurrence of the incident and, therefore, PW-3, who is the father of the victim, has stated that the accused person is innocent and the case was lodged out of misunderstanding against the accused person. So, we have found that the most material witnesses of this case as PW-2 & PW-3 did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. mandates an acquittal of the accused from an offence, which states that "If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."
- **9.** In view of the above discussion and in view of Section 232 Cr.P.C., I have found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused person is not found guilty for the offences punishable U/s 376 (2)(i) of IPC, r/w Section 4 of POCSO Act and as such, he is acquitted and set at liberty. His bail bond shall remain extended till next six months.

Judgment is delivered and pronounced in the open Court on this 15th day of July, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1 :- Smt. Bandana Dewri
- 2. PW-2:- Sh. Bhabiram Dewri.
- 3. PW-3:- Sh. Pranjal Dewri.
- B. <u>Defence witness: Nil.</u>

C. Prosecution Exhibit:

- 1. Ext.1 :- Ejahar.
- D. Defence exhibits :- Nil.

Special Judge, Morigaon.

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15.07.2017.

Accused person Pradip Dewri is present.

Judgment is ready and pronounced in the open Court.

Considering the evidence on record, it is found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused is not found guilty for the offence punishable U/s 376 (2) (i) of IPC r/w Section 4 of the POCSO Act and as such, he is acquitted and set at liberty. His bail bond shall remain extended till next six months.

Judgment is enclosed in separate sheet.

Special Judge, Morigaon.