IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 36 of 2017 U/S 451 IPC & Section 10 of POCSO Act 2012 (Arising out of Nazira P.S. Case No. 132/2017)

State of Assam

-Vs-

Md. Aptar Ali Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Md. Nekibuddin Ahmed, Advocate

Date of framing Charge : 08.11.2017
Dates of Evidence : 07.02.2018
Date of Argument : 07.02.2018
Date of Judgment : 07.02.2018

<u>JUDGMENT</u>

1. Prosecution case, in brief, is that on 20.07.2017, one Smt. Minu Das lodged an FIR with O/C, Nazira P.S. alleging, inter alia, that on that day, at about 12 noon, when her daughter victim 'K' (name withheld), aged about 12 years was alone in the house, accused Aptar Ali @ Hanhi, who is a businessman of clothes came to their house and asked for a glass of water from the victim. While victim was about to give water to him, suddenly accused entered inside their house and attempted to commit misdeed with her. By that time her husband arrived there and rescued the victim from the clutches of the accused.

- 2. On this FIR, Nazira P.S. Case No. 132/2017, U/S 12 of POCSO Act, 2012 was registered and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody.
- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 451/354(B) IPC, read with Section 8 of POCSO Act, 2012.
- 4. Upon taking cognizance on the charge sheet, on 04.08.2017 accused was allowed to go on bail. After furnishing copy to the accused, vide order dated 08.11.2017, charges U/S 451 IPC and Section 10 of POCSO Act, 2012 have been framed against the above named accused person to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses viz. the victim and her parents.
- 5. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- 6. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Md. Nekibuddin Ahmed, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE

- 7. (I) What was the age of the victim on the 20.07.2017?
 - (II) Whether on 20.07.2017, at 12 noon accused committed house trespass by entering into the house of informant in order to commit sexual assault with the victim 'K'?
 - (III) Whether on 20.07.2017, at 12 noon accused committed aggravated sexual assault on the victim 'K'?

DECISION AND REASONS THEREOF

8. PW-1 Smt. Minu Das, the mother of the victim and informant of

this case in her evidence deposed that her daughter the victim K was is presently reading in class IX and aged about 14 years. On 20.07.2017, at about 3 PM on returning home from field, her husband Nathu Das and neighbours has informed her that while the victim was reading in the house by staying alone and her husband was in the shop, accused Aptar Ali came to her house and asked for a glass of water from her daughter. On asking her daughter she also stated that when accused Aptar came to house and while she was about to give water to him, she suddenly fell down and become senseless. While Aptar picked up on his lap, neighbours have seen the incident and compelled her to file the FIR. On being forced she filed the FIR vide Exbt. 1. In her cross-examination she admitted that she cannot say about the contents of the FIR. She cannot say who wrote the FIR. She just put her signature on being asked by locals. Accused Aptar used to frequently visit her house. She has no objection in acquittal of the accused from this case.

9. PW-2, the victim K in her evidence deposed that she is presently reading in class IX and aged about 14 years. On 20.07.2017, at about 12 Noon, when she along with her father was in their house, and reading, accused Aptar Ali came to their house and asked her for a glass of water. Her father went to nearby shop for bringing beetle nut for the accused. Suddenly accused entered inside the house and out of fear she fell down and become senseless. While Aptar attempted to hold her, her father and neighbours have seen the incident. At that time her mother went to field. On return of her mother, she informed the matter to her. Out of anger she lodged FIR. Police came to investigate the matter and interrogated me. Police took me to hospital and also in court. She has given statement in Court vide Exbt. 2. While giving statement in court she had deposed in similar lines. In her cross-examination she admitted that her father went to nearby shop. As her father saw the accused in holding her while falling, on suspect, the case was filed. Accused did not misbehave her in any manner. He just hold her as she fell down.

- 10. PW-3 Sri Nathu Das in her evidence deposed that his daughter is presently reading in class IX and aged about 14 years. On 20.07.2017, at about 1 PM accused Aptar came to his house and asked to have a beetle nut. On this he went to nearby shop and on return home he saw that accused Aptar while holding the victim on her falling down. On return of his wife she narrated the incident to her. On being forced by neighbours her wife filed the FIR. In his cross-examination he admitted that the beetle nut shop was not near to his house. He returned home within few minute. They have to file the case as neighbours compelled them to do so. He has seen the accused in misbehaving his daughter in any manner. She also did not report him of any ill treatment by accused in her absence. He did not want to prosecute the case.
- 11. From the evidence of P.W.1, P.W. 2 and P.W. 3 it is seen that on the date of alleged incident, victim is aged about 14 years. Defence did not challenge this fact.
- 12. So far charge of sexual assault is concerned, from the evidence of PW 1 to PW 3 it appears that none of them deposed anything against the accused implicating him with the alleged offences. From their evidence it appears that on the date of incident, while victim was reading in the house by staying alone, accused came to their house and asked for a glass of water from the victim and when accused entered inside the house and while victim was about to give water to him, victim suddenly fell down and while accused picked up the victim, by that time victim's father (P.W.3) arrived there and saw the accused in holding the victim while she fell down. Neighbours have also seen the incident and on being forced by neighbours P.W.1 lodged the FIR. In her cross-examination, P.W. 2 admitted that accused did not commit ill treatment to her. She clearly stated that accused just hold her while she was falling down.
- 13. So far allegation of house trespass is concerned it is in the evidence of witnesses that accused is a regular visitor to the house of the informant being a vendor of cloth business. Hence in absence of prove of prime

charge, it cannot be said that on that he committed house trespass with an intention to commit an offence.

- Considering all above, I am of the opinion that prosecution has failed to prove the charges U/S 451 IPC and Section 10 of POCSO Act, 2012 or any other minor offences against the accused Md. Aptar Ali. As such, accused Md. Aptar Ali is acquitted from the charges U/S 451 IPC and Section 10 of POCSO Act, 2012 and set at liberty forthwith.
- 15. Bail bond executed by the accused and his surety are extended for another six months from today U/S 437-A Cr.P.C
- 16. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 A Cr.P.C.
- 17. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 18. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 7th day of February 2018 Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Smt. Minu Das (Informant)
 - P.W.2 Victim K
 - P.W.3 Sri Nathu Das
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
 - Exbt.1 FIR
 - Exbt.2 164 Cr.P.C. statement of the victim.

Special Judge, Sivasagar: