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

Sessions Case No. 211/2016
(Under Section 4 of POCSO Act)

Present: Md. M. Ahmed,
Sessions Judge
Kamrup (M), Guwahati.

State of Assam

- Vs -

Paneswar Laskar @ Hari LaskarAccused

Appearance for the Parties:

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

Advocate for the accused : Sri N. Paul, Learned Advocate.

Date of recording evidence :04.01.2017 & 23.02.2017

Date of Argument : 19.04.2017

Date of Judgment : 29.04.2017

JUDGMENT

1. Prosecution case in brief is that on 12.06.2016 at about 10:00 A.M. while victim girl Ms. 'X' (relevant name is withheld to screen her from ignominy) /

daughter of informant Smt. Depali Laskar of Kushal Nagar, under Sonapur P.S. district Kamrup (E), was studying in her room. Her step-father i.e. present accused took her inside his bed room and took off her panty, gagged her mouth with his hands and forcibly tried to insert his penis inside her womanly part. At that time, the informant was not at home. The victim out of shame and fear concealed to her mother finally on 16.06.2016. She narrated the entire matter to the informant and has also told her that many a times in past, the accused did the same thing i.e. forcibly tried to ravage her modesty. Coming to know this ignominable act of her husband /the present accused, the informant went to Sonapur P.S. and she lodged an FIR alleging sexual assault being committed in the victim in her house. On receipt of this FIR Sonapur P.S. registered a case vide Sonapur P.S. Case No. 128/16 under Section 4 of the POCSO Act. At that time, the victim was aged about 9 years. Investigation was set in motion. During the course of investigation, the I/O visited the place of occurrence, examine material witness, subjected the victim to medical examination. Collective reports arrested the aforenamed accused and caused his production before the learned court below, where from he was remanded to judicial custody and upon collective investigation and having found sufficient incriminating materials, the I/O submitted charge-sheet against the aforenamed accused for alleged commission of offence punishable under Section 4 of POCSO Act. At the time of submission of the charge-sheet the accused was culling his hills behind bars. At subsequent stage, he was let off on court bail. Thereafter, my learned predecessor in court upon appearance of the accused and having heard the learned counsel of both sides and on perusing the materials on record framed charge under Section 4 of POCSO Act and read over and explained the particulars therein to the present accused to which he professes innocence and claims to be tried.

Points for determination:

2. In the instant case, it is to be determined if on 16.06.2012 at about 9/10 A.M. at Kushal Nagar under Sonapur P.S. the aforenamed accused committed penetrative sexual assault on Ms. 'X'. The victim thus aged about 9 years. The daughter of the informant Depali Laskar. In this case the prosecution has examined 5 witnesses in all. Thereafter, the accused was examined under Section

3

313 of Cr.P.C. His plea is of total denial and false implication. He further declines to lead evidence in defence.

3. I have heard the argument so advanced by learned counsel of both sides. Considering the evidences on record and come to the following decisions:-

Decisions and reasons thereof:-

4. The admitted facts that marked upon attentive analysis of the evidences on record are that informant Depali Laskar is the wife of the present accused. The victim girl is his step-daughter. She was a school going girl at the relevant time. In this case the prosecution has alleged that on a particular morning, when the informant was not at home, the accused took the girl to his bed room from her study table and committed penetrative sexual assault upon her. On 1st appearance, it seems that the accused has committed a sinful act. But when this court evaluates the testimony of the victim, it is seen that the whole prosecution case is turned upside down. She in her evidence deposing as P.W. 1 has stated that she had a very sweet relation with her father, the present accused. She has further stated in a categorical manner that her father loves her immensely. She has further very categorically ruled out any incident of the nature as alleged by the prosecution to have ever taken place. She remains stead fast to the fact that nothing happened involving herself. Her father has a pan shop and at the relevant time, she was studying at Class-V. She has no knowledge that her mother filed this criminal case against her father. She has also stated that she knows nothing about any kind of occurrence. Thus from the evidence of P.W. 1, it is crystal clear that the victim has refused to support the prosecution evidence. Material suspect in the first incidence, she negatives the claim of the prosecution that on the eventful day, she was studying in her room. Her mother was not there. Thus, he took her to the bed room and committed penetrative assault upon her. Negating all such allegations, she has rather stated that she has a very sweet relation with her father and her father also loves her too much. Proceeding further, we have found that FIR was lodged by one Depali Laskar. Now let us turn attention to the evidence of this witnesses to see if she supports the prosecution evidence or has demolished it. Upon attentive evaluation of P.W. 2, the informant,

it is seen that she lodged the FIR against her husband out of sheer anger. She has further elaborated the matter by stating that during the period she was livid with the conduct of the accused and out of frustration, she lodged Exhibit 1, the FIR. She also remains very categorical to the fact that her husband did nothing wrong to the victim. She has also stated that she has continued living as husband and wife and there is no acrimony in between them. She has also stated that she has very cordial relation with her husband and no incident as alleged ever took place. Thus, we have found that the evidence of the informant and the victim girl have totally unsettled the prosecution allegation. Both the mother and the daughter have deposed that no incident as projected by the prosecution in his case ever took place. Both of them have also stated that they have a very cordial relation with the accused. The accused has immense love for his spouse and at the time when Exhibit 1, the FIR came into existence, the informant was very much offended with the conduct of the husband and to teach him a lesson ,she lodged the FIR. However, she did not know the content of the FIR, as it was written by someone else. The evidence of the rest of the P.W.s is formal in nature P.W. 3 is a reported witness. He has very categorically stated that he has no knowledge regarding the incident. P.W. 4 deposed likewise; he has submitted that he has a shop situated nearby. He knows the informant as well as the accused and the victim. He also knows that the victim is the daughter of the accused; however he has no knowledge regarding the incident. Evidence of P.W. 5, is on the dotted line. She similarly has submitted that the victim is the daughter of the informant. She knows the accused and she has no knowledge, if ever anything occurred in the house of the informant. Thus, from the above discussions, it is apparent that the prosecution has utterly failed to establish the quilt of the accused for alleged commission of offence punishable under Section 4 of POCSO Act beyond all reasonable doubt. In the result, the accused is found not guilty and is acquitted and set at liberty forthwith.

5. The bail bond of the accused stands discharged.

6. Signed, sealed and delivered in the open court on this 29th day of April, 2017 at Guwahati.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)

Sessions Judge, Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Exhibit 1: Statement of the victim recorded under Section 164 Cr.P.C.

Exhibit 2: FIR.

Exhibit 3: Printed form of the FIR.

(B) Defence Exhibit: Nil.

(C) Court Exhibit: Nil.

(D) Prosecution Witnesses:

PW-1: Ms. Jamuna Laskar.

PW-2 : Smti. Depali Laskar.

PW-3 : Sri. Gopal Das.

PW-4: Smti. Anu Bania.

PW-5 : Smti. Bharati Barman.

(E) Defence Witnesses: Nil

(F) Court Witnesses: Nil.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati.