IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 19 of 2019 u/s 8 of POCSO Act 2012 and Section 323/451/354 IPC (Arising out of Simaluguri PS Case No. 36/2019)

State of Assam

-Vs-

Sri Hontu Kurmi ...... Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D.K. Gohain, Advocate

(Legal Aid Counsel)

Date of framing Charge : 12.07.2019
Date of Evidence : 01.08.2019
Date of Argument : 01.08.2019
Date of Judgment : 01.08.2019

## <u>JUDGMENT</u>

- 1. Prosecution case in brief is that on 26.03.2019, informant Sri Santosh Kurmi lodged an FIR with O/C, Simaluguri PS alleging, inter alia, that on 23.03.2019, while his younger sister victim 'M' (name withheld), aged about 15 years was alone in the house, accused Hontu Kurmi came to the residence of the informant and misbehaved the victim. While victim raised objection, accused assaulted the victim with a rod causing bleeding injury on her head. She fell down and became senseless. On hearing hue and cry of the local people, he returned home and saw that victim was lying inside the house with injuries. Immediately she was taken to Lakuwa Bagan Hospital where she is undergoing medical treatment.
- 2. On receipt of the FIR, Simaluguri PS Case No. 36/19 u/s 448/354(A)/326 IPC read with Section 8 of POCSO Act, 2012 was registered Spl. (P)Case No. 19/19

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and started investigation. During investigation, victim was medically examined and recorded her statement in the court U/S 164 Cr.P.C. During investigation, accused Hontu Kurmi was arrested and remanded to judicial custody.

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person u/s 448/354(A)/324 IPC.
- 4. It may be noted here that from the record, it appears that initially the case was registered u/s 448/354(A)/326 IPC read with Section 8 of POCSO Act, 2012. After investigation, I.O. of this case has submitted Charge Sheet against the accused for trial u/s 448/354(A)/324 IPC. However, while giving certificate, Supdt. of Police Sivasagar, after scrutinizing the Case Diary and the FF prepared by the I.O., has come to the conclusion that a case is made out u/s 448/354(A)/324 IPC R/W Section 8 of POCSO Act 2012 and forwarded the Charge-Sheet to this Court for trial.
- 5. Upon taking cognizance on the charge sheet and after furnishing copy to the accused persons, vide order dated 12.07.2019, charges u/s 323/451/354 IPC read with Section 8 of POCSO Act, 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses viz. the victim and informant as PW 1 and PW 2 respectively.
- 6. Considering the nature of the evidence of victim and informant, examination of accused persons u/s 313 Cr.P.C is dispensed with.
- 7. By using the powers u/s 232 Cr.P.C. and without calling the accused to enter into defence, I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. D.K. Gohain, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

## POINTS FOR DETERMINATION ARE

- 8. (i) Whether on 23.03.2019, accused voluntarily caused hurt to the victim?
  - (ii) Whether on 23.03.20129, accused committed house trespass by Spl. (P)Case No. 19/19 Page 2 of 6

entering into the house of the informant in order to commit the offence of sexual assault upon the victim?

- (iii) Whether on 23.03.2019, accused used criminal force on the victim to outrage her modesty and thereby committed an offence punishable u/s 354 IPC?
- (iv) Whether on 23.03.2019, the victim was subjected to sexual assault by the accused?

## **DECISION AND REASONS THEREOF**

9. PW 1, the victim 'M' in her evidence deposed that accused Hontu Kurmi is known to her being Cousin. Presently she is aged about 14 years. She is reading in class IX in Dhitaipukhuri High School. On 23.03.2019, at about 3.30 PM, while she was alone in her house and cutting firewood in front side court yard, accused Hontu came to her house and asked for lipstick. On her denial to have any lipstick with her, accused left her house. Thereafter while she was again busy in cutting fire wood and entered her house to keep the dao, accused suddenly assaulted her on her head from her backside. She sustained bleeding injury on her head. She became senseless. She was taken to Lakuwa Hospital and she regained her sense at Lakwa Hospital. Her younger brother Dipu Kurmi informed her that accused sent him to bring Kamala Pasand and for giving the same to accused, while Dipu entered their house, he saw her laying with injuries and that accused was in sitting inside the house. From Lakwa she was brought to Sivasagar Civil Hospital where she stayed for 3 days as indoor patient. Therefrom, she was referred to Dibrugarh for better treatment. On this incident, her brother Santosh Kurmi has filed an FIR. Police took her to Nazira Hospital for medical checkup. Police took her for medical check up and also in Court. She gave her statement in Court. Exbt. 1 is her statement in Court. Exbt. 1(i) is her signatures. In her cross by defence the victim admitted that accused is the son of her uncle. He resides in different house in same court-yard. Accused used to like her a lot as sister and use to play with her. She gave her statement in Court. While giving statement in Court and to Police, she has not stated that "Her brother Dipu Kurmi informed her that accused sent him to bring Kamala Pasand and for giving the same to accused, while Dipu entered their house, he saw her laying with injuries and that accused was in sitting inside the house." She has not seen the accused in assaulting her. Even she has not seen the accused in her house. She has seen him in entering her house after his return on her denial of having lipstick. She named the accused on being informed by her brother Dipu. She denied that she sustained injury by falling on her own. She further denied that accused did not assault her. She stated that accused used to consume liquor and make quarrel in the village. On this matter, a village meeting was also held. VDP Secretary Pradip Gogoi and Phuleswar Kurmi are known to her. Presently they have compromised the matter with the accused as he is her first cousin. She has no objection if the accused is acquitted from this case.

- PW 2 Sri Santosh Kurmi, the informant of this case, in his 10. evidence deposed that accused Hantu Kurmi is his cousin. Victim 'M' is his younger sister. She is aged about 14-15 years. On 23.03.2019, at about 4 PM, while returned home, he saw that local people were preparing to take the victim to Hospital for the injuries on her head. From his younger brother Dipu, he came to know that he saw the victim 'M' while laying inside the house with injuries. She was taken to Lakuwa Bagan Hospital and on the next day morning she was brought to Sivasagar Civil Hospital where she stayed for two nights as indoor patient. Therefrom, victim was referred to Dibrugarh for better treatment. On this incident, he filed one FIR vide Exbt. 2. Exbt. 2(i) is his signatures. In his cross examination, he admitted that he has not seen the incident on his own. His brother Dipu did not tell him that he saw the accused in assaulting victim. The victim 'M' also could not recognize the assailant. FIR was written by others at Police Station. He cannot say the contents of the FIR. Before police, he has not stated that "From his younger brother Dipu, he came to know that he saw the victim 'M' while laying inside the house with injuries." Presently they have compromised the matter with the accused as he is his first cousin. He has no objection if the accused is acquitted from this case.
- 11. From the evidence of P.W.1 and P.W. 2 it is seen that they deposed nothing against the accused person implicating him with the alleged

offences. The victim in her examination-in-chief though stated that while she entered her house to keep the dao, accused suddenly assaulted her on her head from backside and she sustained bleeding injury on her head, but from her cross examination as stated herein before, it appears that she has not seen the accused in assaulting her from backside. Even she has not seen the accused in her house. She admitted that she named the accused on being informed by her brother Dipu. In her cross the victim has stated that accused used to like her a lot as sister and used to play with her. The victim in her evidence nowhere mentioned that she was criminally intimidated or that she was subjected to sexual assault by the accused. In her cross the victim admitted that presently they have compromised the matter with the accused as he is her first cousin and she has no objection in acquittal of the accused from this case. In his cross examination PW 2 (informant) admitted that that he has not seen the incident on his own and his brother Dipu did not tell him that he has seen the accused in assaulting the victim. PW 2 further admitted that victim could not recognize the assailant. So from the evidence of PW 1 and PW 2 it appears that the allegations brought against the accused are not supported by the victim and her elder brother, i.e. PW 2. Offence u/s 323 IPC is otherwise compoundable. Thus from the above evidence on record, it appears that the ingredients of offences u/s 323/451/354 IPC and Section 8 of POCSO Act, 2012 are totally missing in this case.

- 12. Considering above, I am of the opinion that prosecution has failed to prove the ingredients of charges u/s 323/451/354 IPC and Section 8 of POCSO Act, 2012 against the accused Sri Hontu Kurmi. As such, accused Sri Hontu Kurmi is acquitted from the charges u/s 323/451/354 IPC and Section 8 of POCSO Act, 2012 and set at liberty forthwith. Inform the Jail authority to release the accused forthwith.
- 13. Issue release order to the Superintendent, District Jail, Sivasagar accordingly. As the accused is in Jail, no order is passed u/s 437-A Cr.P.C.
- 14. Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.

- 15. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 16. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 1st day of August, 2019 at Sivasagar.

Special Judge, <u>Sivasagar</u>:

## **APPENDIX**

- 1. Prosecution witnesses:
  - PW 1 Victim 'M'
  - PW 2 Sri Santosh Kurmi (Informant)
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
  - Exbt.1 Statement of the victim given in Court u/s 164 Cr.P.C.
  - Exbt.2 FIR

Special Judge, Sivasagar