Date: 07.06.2019

IN THE COURT OF THE SPECIAL JUDGE, SIVASAGAR

Present – Shri Biprajit Roy, AJS, Special Judge, Sivasagar,

Spl. (P) Case No. 51/2017

Under section - 323/354A of IPC & 12 of POCSO Act

State -Vs-Sri Ajoy Satnami

Advocate appeared:

For the State : - Mr. S. Gogoi Addl. P.P.

For the accused : - Mr. P. Konwar

Date of evidence :- 08.10.2017,17.11.2018,07.05.2019,20.05.2019

Date of argument: - 24.05.2019 Date of judgment: - 07.06.2019,

JUDGMENT

- 1. The case of the prosecution is that the informant Ajoy Bhumij lodged an FIR in the Nazira police station on 09.10.2017 stating that on 08.10.2017 at about 5.30 a.m. his niece aged about 14 years went to collect water from then Govt. water supply tap. While she was collecting water the accused Ajoy Satnami arrived there and in front of his niece removed his clothes and made unwanted obscene gestures and also caught hold of the hand of the victim girl and thereby outraged her modesty. When the informant asked the accused not to do such act the accused assaulted him physically.
- 2. The Officer-in-charge of Nazira P.S. received the FIR and registered Nazira P.S. case no. 183/2017 u/s. 323/294/354 of IPC and u/s 6 of the POCSO Act. After completion of investigation charge-sheet was submitted against the accused Ajoy Satnami u/s 323 of IPC read with section 12 of the POCSO Act.
- 3. On appearance of the accused copy of relevant documents were furnished to the accused and charge u/s. 323/354A of IPC and section 12 of POCSO Act were framed against the accused which were read over and explained to the accused to which he pleaded not guilty.

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4. In the course of trial prosecution side examined 7 (seven) witnesses. The defence plea is of denial.

- 5. The accused person was examined u/s 313 Cr.P.C. The defence plea is of denial.
- 6. Heard argument of learned counsel of both sides.
- 7. The points for determination in this case are as follows:
- (I) Whether on 08.10.2017 at about 5.30 a.m. the accused Ajoy Satnami outraged modesty of the victim girl and also made unwanted gestures by removing his own clothes in front of the victim and thereby harassed her sexually?
- (ii) Whether the accused violuntarily caused hurt to the informant Ajoy Bhumij?

Decision, Discussion and reasons:

8) The P.W.1 Ajoy Bhumij is the informant. In the course of trial he exhibited the FIR which is marked as Ext.1 wherein Ext. 1(1) is his signature. He stated that the accused is his neigbour and the victim girl who is aged about 15 years is his niece. He stated that at about 5.30 a.m. while the victim was collecting water from the Govt. water supply tap the accused pulled her hand and asked her to move the tap to other side. When the victim refused to do so, the accused scolded her uttering filthy language. He stated that at the time of incident he was present there and after seeing the incident he lodged the FIR. But the PW-1 did not disclose what obscene words were uttered by the accused.

In cross examination PW-1 admitted that at the time of incident he was at some distance from the place of occurrence. He also admitted that the accused did not misbehave his niece. Only quarrel took place in connection with blocking of the drain.

9) The P.W.2 is the minor victim. She stated that the accused is her neighbour and the informant is her uncle. She stated that about one year ago at 5.30 a.m. she went to collect water from the Govt. water supply tap and at that time the accused arrived there and touched her hand and also moved the direction of the tap to the other side. At that time her sister and other people were present. Hearing hue and cry her uncle Ajoy Bhumij came there and asked the accused not to do so. The accused assaulted her uncle by kicking. The PW-2 also exhibited birth certificate marked as Ext. 2 and stated that her date of birth is 01.01.2002 She also stated that her statement was recorded in

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the Court during investigation which is marked as Ext. 3 wherein Ext. 3(2) and 3(3) are her signatures.

In cross-examination PW-2 stated that on the day of occurrence someone had blocked his drain due to which the accused and his family members faced trouble. She stated that the accused asked her to move the tap to the other direction. She admitted that the accused did not assault her physically. She stated that the accused only removed her hand from the water tap. The PW-2 clearly stated that the accused did not misbehave her in any manner. Thereafter an altercation took place in between the informant and the accused. She stated that later on they amicably settled the matter in the village and has got no objection if the accused is acquitted from the case.

- 10) The P.W.3 who is the mother of the victim stated in her evidence that on 08.10.2017 at about 5.00 a.m. her daughter had gone to collect water from the govt. water supply tap and at that time the accused abused her daughter and showed his private parts to her daughter by removing his clothes. She stated that thereafter villagers gathered and hearing noise she went to the place of occurrence and came to know about the incident from her daughter. She stated that during investigation birth certificate of her daughter was seized and her signature was taken in the seizure list which is marked as Ext. 4 wherein Ext. 4(1) is her signature. The PW-3 in her cross examination stated that some one had blocked the drain which created trouble in the house of the accused and a quarrel took place in that connection. She also stated that the accused did not abuse her daughter physically. She stated that the FIR was lodged against the accused due to the misunderstanding that grew up after the drain was blocked. She also stated that later on they amicably settled the matter and she has got no grievances against the accused.
- 11) The P.W.4 Rupa Bhumij stated in her evidence that on the day of occurrence i.e. on 08.10.2017 in the early morning when the victim had gone to collect water from the Govt. water supply tap she was abused by the accused with filthy language. She stated that her husband intervened in the matter and a quarrel took place in between the accused and her husband.

In cross examination she admitted that someone had blocked the drain causing inconvenience to the accused. She also admitted that she did not see the incident as she was not present there at the time of incident.

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12) The P.W.5 Anil Chowra stated in his evidence that the accused and the victim girl are known to him. He stated that he came to know that a quarrel took place while the victim went to collect water from the water supply tap.

- 13) The P.W.6 Hemanta Chowra stated in his evidence that he came to know that a quarrel took place in between the informant end the accused in connection with collecting water from the tap.
- 14) The PW-7 SI Nurtaz Ali in his evidence stated that on 09.10.2017 he was posted at Nazira police station. He had investigated the case and submitted charge sheet against the accused u/s. 323 of IPC and section 12 of POCSO Act. The PW-7 exhibited sketch map marked as Ext. 6, the medical report of the victim collected by him which is marked as Ext.7, the medical report of Ajoy Bhumij marked as Ext. 8 and the charge sheet marked as Ext.9 wherein Ext. 9(1) is his signature.
- From perusal of the evidence available on record it appears that though in the FIR some serious allegations were levelled against the accused but during evidence of PW-1 who is the informant-cum- one of the victim of the alleged incident stated that a quarrel took place in connection with blocking of a drain. The PW-1 remained totally silent about any physical assault inflicted upon him by the accused. The PW-2 who is other victim in her evidence simply stated that the accused had touched her hand and moved the direction of the tap to other side. She clearly stated that the accused did not misbehave her in any manner. The PW-3 adduced some implicating evidence against the accused but she was not supported by the PW-1 and PW-2. The other prosecution witnesses simply stated that a quarrel took place while the victim was collecting water.
- 16) Therefore, from the evidence on record on record it is clear that the prosecution side has failed to establish the case against the accused. Accordingly the accused is held not guilty and he is acquitted and set at liberty forthwith.
- (17) The bail bond of the accused is extended for a period of 6(six) months from today.

Given under my hand and seal of this court on this 07th day of June, 2019.

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<u>APPENDIX</u>

- 1. Prosecution witnesses:
 - 1 Sri Ajoy Bjhumij,
 - 2 Victim,
 - 3 Smt. Malati Bhumij,
 - 4 Smt. Rupa Bhumij,

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- 5 Sri Ani Chowra,
- . 6 Sri Hemanta Bora,
 - 7 -SI. Nurtaz Ali,,

2. Exhibits by prosecution-

- Ext.1 FIR,
- Ext.2 Birth certificate,
- Ext.3 statement u/s. 164 of Cr.P.C of Smt. Lakhsmi Bhumij,
- Ext.4 Seizure list,
- Ext.5 Zimmanama,
- Ext.6 Sketch map,
- Ext.7 medical report of victim,
- Ext.8 medical report Ajoy Bhumij,
- Ext.9 Charge sheet,

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