IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.08/2016 U/S 357/354 (i) IPC, R/W Section 4 of POCSO Act

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Sri Bijoy Biswas Accused

Date of Charge

:- 01.06.2016.

Date of recording evidence :- 09.01.2017.

Date of Argument

:- 09.01.2017.

Date of Judgment

:- 10.01.2017.

Appearance for the Parties

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

Advocate for the accused:- Mr. P. R. Borah, Ld. Advocate,

Mr. B. J. Bezbaruah, Ld. Advocate.

JUDGMENT

1. In this case, the prosecution has alleged that a 11 (eleven) years old girl fell a victim to sexual assault at the hand of accused. The accused is one Sri Bijoy Biswas of village Na-bheti, P.S. & Dist. Morigaon (Assam). The informant Sri Lakhinson Pator is the resident of village Barbari, P.S. Bhuragaon, Dist Morigaon (Assam). He is the father of the victim, Miss X (the real name of the victim is kept conceal to save her from infamy). According to the prosecution, the daughter of the informant i.e. the victim Miss X used to take tuition in tutorial coaching centre to get her admission in a Navodaya Vidalaya. There was a batch of 13 (thirteen) girl student including the victim, who were lodged in

that coaching centre. While she (the victim) was staying there, from the very day of her admitted there, the above-named accused on different pretexts used to touch her body at various parts. Finally, on the eventful night, while the victim along with four other girls were sleeping in a dormitory of that coaching centre, the above-named accused tiptoed inside the said room and he started touching her bosom and her private part and attempted to commit rape upon the victim. On the next day, the informant went to Morigaon P.S. and he lodged an F.I.R. On the basis of which, the O/C Morigaon P.S. registered a case vide Morigaon P.S. Case No.351/15, U/s 457/354/376/511 IPC, read with Section 4 of the POCSO Act.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, examined the victim as well as other material witnesses and also got the victim medically examined and got her statement recorded U/s 164 Cr.P.C. The I.O. arrested the accused and produced before the learned Court below, wherefrom, he was remanded to judicial custody. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused with allegation of offences punishable U/s 457/354 (i) of IPC, read with Section 4 of POCSO Act. At the time of submitting the charge-sheet, the accused was languishing in jail hajot. Subsequently, he was let off on court bail and thereafter, the present accused attended before the Ld. Court and he was 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 and after having heard Ld. Counsel of both sides and basing upon materials on record my learned predecessor framed charges U/s 357/354 (i) of IPC, read with Section 4 of POCSO Act, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused on 13.112.2015 at around 10.30 P.M. at village Na-bheti under Morigaon P.S. in the district of Morigaon used criminal force to Miss X (the victim), aged about 11 years, in attempting wrongfully to confine her?
- (ii) Whether the accused on the same day, time and place used criminal force to Miss X, a girl of 11 years, with intend to outrage her modesty?
- (iii) Whether the accused on the same day, time and place committed penetrative sexual assault on Miss X, a minor girl, below eighteen years of age?
- 3. In this case prosecution has examined only 2 (two) PWs, the most material witnesses of this case, the informant as PW-1 and the victim as PW-2. But their evidence did 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 ends of justice. The accused declined to adduce defence evidence.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

4. In this case, it is alleged by the prosecution that on the eventful day the above-named accused used criminal force to the victim, in attempting wrongfully to confine her and with intend to outrage her modesty and also committed penetrative sexual assault.

- 5. To prove this fact, the prosecution initially examined PW-1, the informant. He in his evidence has stated that the occurrence of incident took place about one year ago. He knows the accused and the victim girl Miss X is his daughter. He has further stated that he put his daughter Miss X into the coaching center of accused in order to get training for admission at Navodaya Bidyalaya. PW-1 has further stated that there were some other school girls, who also admitted into the coaching center of the accused and on a particular day, his daughter Miss X told him that the accused drew sketches by pen on her face. So, on being anguished, he lodged this case against the accused. PW-1 proved Ext.1, the ejahar, whereupon Ext.1 (1) is his signature. In his cross-examination, he has stated that he does not know the contents of the ejahar and he just put his thumb impression on the ejahar. The ejahar was not read over to him. In his cross-examination, PW-1 has further stated that when the accused drew sketches on the face of his daughter (Miss X), she got frightened and called him over telephone. However, he heard that the accused used to draw sketches on the face of other girls also out of affection. In his cross-examination, PW-1 has further stated that the accused did not commit any illegal act with his daughter, the victim (Miss X) and he lodged the case against the accused out of misunderstanding.
- 6. PW-2, the victim girl, she in her evidence has stated that she was undergoing tuition under the coaching centre about one year ago in order to get admission in Nobodaya Vidyalaya and the name of her tutor is Bijay Biswas. PW-2, the victim has further stated that her teacher Bijay Biswas (the accused) used to make lots of fun with them during tuition period and on a particular day, he drew sketches on her face by his pen and, so, she got frightened and reported this fact to her father. Subsequently, she came to know that her father lodged a case against the accused. PW-2, the victim has further stated that she could not remember whether she made any statement before police. In her cross-examination, she has stated that the accused did not commit any illegal act or shown any abnormal behavior with

her. Her father lodged the case against the accused out of misunderstanding and she has no objection against her teacher (the accused). PW-2 has further stated that she does not know whether she made any statement in Court.

- 7. Thus, we have found that none of these two vital PWs (i.e. complainant and victim) uttered a single word as regards using criminal force to wrongfully confine the victim and outraging her modesty and also about 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 victim herself stated that the accused did nothing wrong with her. So, we have found that the most material witness of this case as PW-1 & PW-2 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 is not found guilty for the offences punishable U/s 357/354 (i) of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty. In this case, since the victim girl has completely negated the prosecution case, therefore, she is not entitled to receive any compensation under section 357 A Cr.P.C.

Judgment is delivered and pronounced in the open Court on this 10^{th} day of January, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1: Sri Lakhison Pator,
- 2. PW-2: Miss Sagarika Amchi,
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit:
- 1. Ext.1:- the ejahar.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.