IN THE COURT OF THE SPECIAL JUDGE :::::::::::: HAILAKANDI

Special (POCSO) Case No. 09/2017.

(U/S -292/ of IPC R/W Sec. 4 of POCSO Act, 2012 & Sec. 67 of IT Act, 2000)

State

- Versus -

Fayaz Uddin Laskar

...... Accused.

PRESENT: Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri K.U. Laskar, Ld. Advocate.

Dates of recording evidence :- 11.10.2018, 28.01.2019 & 29.03.2019.

Date of recording statement u/s 313, CrPC :- 08.04.2019.

Date of Argument :- 08.04.2019.

Date of Judgment :- 10.04.2019.

JUDGMENT

1. The prosecution case, in brief, is that on 04.08.2017 the informant Smti. Rajashree Dhandia, Deputy Superintendent (P), Hailakandi lodged an FIR with the O/c, Lala Police Station alleging that the accused Fayaz Uddin Laskar is found circulating certain obscene photographs taken with one of his students, which have created heavoc to public morality and recently, these pictures are going viral in social media and it might harm the reputation of the said girl. It is further alleged by the informant that the accused is a repeated offender of such type of crimes.

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On receipt of the ejahar, the same was registered as

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Lala Police Station Case No. 244/2017 under Sec. 292 of the IPC read with Sec. 67 of the IT Act,2000 and Sec. 8 of the POCSO Act,2012 and accordingly, police started investigation of the case.

- During investigation, police seized 2 Nos. Of mobile hand set alongwith SIMs. and certain photographs relating to the incident, sent the seized materials to the FSL for analysis. Thereafter, police also collected the FSL Report to that effect and subsequently, on completion of investigation having been found prima facie case, police laid the charge sheet against the accused person Fayaz Uddin Laskar under Sec. 292 IPC read with Sec. 9 of the POCSO Act,2012 and also under Sec. 67 of the IT Act,2000.
- 4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Fariz Uddin Laskar under Sec. 292 of the IPC read with Sec. 9 of the POCSO Act and also under Sec. 67 of the IT Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined 4 Nos. of Pws including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

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Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION:-

- (i) Whether the accused person on 4.8.2017 at village Kacharithal under Lala Police Station put into circulation certain obscene photographs of his student, the victim, by giving the same in the social media, as alleged?
- (ii) Whether the accused person during the aforesaid day and place committed sexual assault upon his student, the victim, as alleged?
- (iii) Whether the accused person during the aforesaid day and place transmitted the obscene photos of the victim in the electronic form, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF:

8. The PW. 1, the victim, has deposed that the accused was her teacher while she was studying in Class IX at Model High School, Kacharital. About 2- 1/2 years back she alongwith her classmates got snapped a group photo and thereafter, she came to know that someone had edited the photograph and did someithing unwanted and after seeing the photograph she became shocked. It is further deposed by the victim that she does not have any allegation against the accused person.

In cross examination, the victim has stated that it is her strong suspect that in order to blame her, someone fabricated the story.

9. The PW. 2, Smti. Rajashree Dhandia, SDP., (Vigilance), Anti Corruption, Guwahati, has deposed that on 4.8.2017 she was posted at Hailakandi as SDP. (Probationary), Hailakandi and on that day, he received an information through Facebook that one teacher namely Foiz Uddin Laskar was found in indecent manner/

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obscene manner with a girl student and then she consulted Sri Pronabjyoti Goswami, SP., Hailakandi and showed him the obscene photographs and on being advised, she lodged the FIR with the O/C, Lala Police Station vide Ext. 1 and Ext. 1(1) is her signature and Exts. 2, 2(1) and 2(2) are the said obscene photographs.

In cross examination, the informnat has stated that she can not say the names of the persons who forwarded the photographs to her mobile phone and whether the photographs had been captured by the mobile phone of accused. It is further stated by the informant that she has not submitted any documentary evidence to show that the accused is a habitual offender and she also does not know the mobile number of the accused.

The PW. 3, Abu Bakkar Laskar has deposed that the victim is his wife. After his marriage with the victim, he saw the photograph of his wife with the accused in whatsap of the mobile phone of his friend but on being asked, his friend did not state him the source from where he got the photograph.

In cross examination, the witness has deposed that such type of photograph can be made fradulently by using modern technology and he also can not say whether the photograph was genuine or not.

- The PW. 4, Jamal Uddin Laskar, the father of the victim, has deposed that about 2 years back one day, the police of Lala Police Station called him to the police station and showed him a photograph of his daugher with the accused and accordingly, he asked his daughter about the photograph but she replied him that she never had any such photograph with the accused and therefore, it is his strong belief that someone with intent to defame his daughter did this by editing his daughter's good photograph.
- 12. In the instant case, the prime witness is the victim

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herself and her evidence bears much significance to prove the alleged commission of the offence. The victim in her evidence has unequivocally divulged that about 2- 1/2 years back she alongiwth her classmates got snapped a group photo and thereafter, she came to know that someone had edited the photograph and did something unwanted. She has also made it clear that she does not have any allegation against the accused and at present, she is a married woman and has been leading her marital life happily with her child. Moreover, Though informant (PW. 2) in her evidence in chief has stated that she received information through Facebook that the accused Foiz Uddin Laskar was found in indecent manner/obscene manner with a girl student but in her cross examination, she has stated that she can not say the names of the persons who forwarded the photographs to her mobile phone. The informant also clearly stated that she can not say whether the photographs have been captured from the mobile phone of accused or not and even, she does not know the mobile number of the accused. The PW. 3, the husband of the victim, also divulged in evidence that such type of photograph can be made fradulently by using modern techonology. From the evidence of the PW. 4, the father of the victim, it also appears that according to him (PW.4), someone with intent to defame her daughter did indecent act by editing his daugther's good photograph.

none of the Prosecution witnesses has been able to implicate the accused person with the commission of the crime alleged, rather, the victim, who is the prime witness of the case as well as her father (PW.4) has given cleanchit to the accused saying that they do not have any allegation against him. As such, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.

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Accordingly, the accused person Fayaz Uddin Contd...........P/6.

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Laskar is acquitted of the offence under Sec. 292 IPC read with Sec. 9 of the POCSO Act and also under Sec. 67 of the IT Act, 2000. Set him at liberty forthwith.

15. The bail bond of the accused person stands discharged.

16. Send a copy of this judgment to the District Magistrate, Hailakandi.

17. The Special (POCSO) case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 10th day of April, 2019.

> Special Judge, Haitakandi Hallakandi

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Dictated and corrected by me:

Special Judge Hailakandi

Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade - I.

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Appendix :-

Oral evidences :-

PW. 1, the Victim.

PW. 2, the Informant,

PW. 3, Abu Bakkar Laskar &

PW. 4, Jamal Uddin Laskar.

Documentary evidences:

Ext. 1- FIR.

Ext. 2, 2(1) and 2(2) - Photographs.

Defence did not adduce any evidence.

Special dudge, Hailakandi.

Hailakandi