# IN THE COURT OF SPECIAL JUDGE, NORTH SALMARA, ABHAYAPURI

Present: Shri P. Bora, A.J.S.
Special Judge
North Salmara, Abhayapuri

# **Special (P) 36 (A) of 2019**

U/S 6 of P.O.C.S.O Act,2012

State of Assam Vs Dhaneswar Nath

## **Appearance**

# **JUDGMENT**

The case for the prosecution in brief is that on 20.04.2019, the informant Smti. Lakhi Sutradhar lodged an FIR before the officer in charge of Borghola Police Out Post under Abhayapuri Police Station, alleging inter alia that the accused person, who used to reside nearby their house, since last 1½ years back on promise to marry her minor daughter, aged about 15 years entered into sexual intercourse with her daughter against her will, due to which her daughter became pregnant. It has also been alleged that on 19.04.2019, the Doctor has confirmed the pregnancy of the daughter of the informant and on last previous night at about 01:00 A.M, a male child was born to her daughter. Hence, the case.

- After receiving the said FI.R. the officer-in-charge of Borghola Police Out Post make a G.D. Entry vide G.D Entry No. 317 dated 20.04.2019, and forwarded the same to the officer in charge of Abhayapuri police Station for registering a case. Accordingly after receiving the said ejahar, the officer in charge of Abhayapuri police station was pleased to register the same vide Abhayapuri P.S case No. 221 dated 20.04.2019. Police started the investigation of this case and after completion of the investigation, the investigating officer has submitted charge sheet U/s 376 I.P.C, R/W Sec. 4 of P.O.C.S.O Act, 2012 against the accused person.
- 3. Accused person appeared before court to face the trial. The copies of all the relevant documents furnished to the accused. After perusing and considering all the relevant documents referred to u/s 173 Cr.P.C as well as after considering the submissions put forwarded by the Ld. Special P.P and Ld. Counsel for defence, finding a prima facie case a formal charge U/S 6 of the P.O.C.S.O Act, 2012 has been framed against the accused person and the same on being read over and explained to the accused person to which accused person pleaded not guilty and claimed to be tried.
- To bring home the charge against the accused person in this case the prosecution side has adduced and examined 2 witnesses including the informant and the victim but defence examined none. Accused was also examined u/s 313 Cr.P.C and on being so examined accused person declined to adduce defence evidence and narrated that false evidence has been adduced against him.

# **5.POINTS FOR DECISIONS**

Whether the accused person on 19.04.2019, committed aggravated penetrative sexual assault upon the victim and thereby committed an offence punishable U/S 6 of the P.O.C.S.O Act,2012.

#### 6. **DECISION AND REASONS FOR DECISION-**

I have gone carefully through the entire evidence of the record. I have also heard and considered the argument put forwarded by the Ld Spacial P.P for the State as well as Ld. Counsel for defence.

- 7. In this case the prosecution has examined the informant Smti. Lakhi Sutradhar as PW-2 in course of evidence PW-2, the informant, who is the mother of the victim of the incident as alleged stated that the FIR was not written by herself as because she is an illiterate person . PW-2 also stated she does not know the person who has written the FIR and she only put her thumb impression in the FIR. It also reveals from the evidence of PW-2 that as because she is an illiterate person, neither she herself read out the contents of the FIR nor the contents of the FIR was read over to her by anyone. Accordingly, PW-2 in course of her evidence clearly stated that she does not know what has been written in the FIR. Thus, it appears that PW-2, the mother of the victim of the incident as alleged, who herself lodged the FIR expressed her ignorance about the fact as alleged in the FIR and in my considered view such kind of ignorance about the fact as alleged in the FIR on the part of the infomant definitely weaken and reduced the weight, authenticity and credibility of the FIR, the basic structure on which the whole prosecution case is relied and rested upon and which puts the machinery of law in to motion. Accordingly on this point benefit goes to defence.
- 8. That apart, in course of cross examination PW-2, the informant stated that she herself had not gone to the police station to lodge the FIR, rather one of his nephew and some other villagers after taking her thumb impression in the FIR has lodged the FIR in the police station.
- 9. In this case in examination in chief although PW-2 stated that about one year back on a day while her daughter was suffering from abdominal pain, she had taken her daughter to the Hospital and while the pregnancy of her daughter was detected on being asked, her daughter told her that the accused person is responsible for her pregnancy and her daughter has gave birth of a male child but in course of cross examination PW-2 clearly stated that in fact the accused person is innocent, rather her daughter was pregnant by her nephew Sateswar and not by the accused. In course of cross

examination PW-2 clearly stated that the name of her nephew is Sateswar, who used to reside with them with in the same campus. PW-2 further stated that although her daughter was pregnant by her nephew Sateswar, who wanted to marry her daughter but due to fear of social contempt they refused to give marriage of her daughter to her nephew Sateswar. In course of cross examination PW-2 reiterated that in fact the accused person is innocent and her daughter was pregnant by her nephew Sateswar. That apart in course of cross examination PW-2 clearly stated that only to escape from the public contempt while her daughter become pregnant her daughter has pointed the accused making him responsible for her pregnancy and in fact her daughter was pregnant not by the accused but by her nephew Sateswar.

- 10. In this case the prosecution side has examined the victim as PW-1 and exhibited her statement as recorded u/s 164 CrPC, vide Ext. 1 and Ext. 1(1) & Ext. 1(2) are the signatures of PW-1.
- 11. Now let us discuss, asses and evaluate the evidentiary value of PW-1, who is the victim of this case. Like PW-2, PW-1, the victim in course of her evidence although stated that above 17 months back on a day in absence of other family members in their house at about 08:00 P.M, the accused person after entering inside their house forcefully taken her to the kitchen garden which is situated in the back side of their house and rapped her due to which after nine months while she was taken by her mother to the Hospital, her pregnancy was detected and on being asked by her mother and other persons, she told them that she was pregnant by the accused person, but in course of cross examination PW-1 clearly stated that she had a love affair with Sateswar, the son of her maternal uncle and on several occasions she used to enter into sexual intercourse with him due to which she became pregnant. In course of cross examination PW-1 stated that after the birth of her child, a public meeting was held in their village, where Sateswar admitted and acknowledged that she was pregnant by him and confirmed his paternity over that child. That apart, in course of cross examination PW-1 clearly stated that after 10 days of the birth of

the child, she eloped with Sateswar. Again in course of cross examination PW-1 reiterated the fact that the accused person is not at all responsible for her pregnancy, rather she was pregnant by Sateswar, the son of her maternal uncle. In this case although the prosecution side has exhibited the statement of PW-1 as recorded u/s 164 CrPC, as exhibited vide Ext. 1 and also exhibited the signatures of PW-1 vide Ext. 1(1) & Ext. 1(2), but in course of cross examination PW-1 clearly stated that she has given her statement as tutored and forced by the police personnel and her mother as well as other family members.

- 12. The above is the threadbare discussion of the evidence on record.
- 13. After perusing and considering the evidence on record in its entirely and considering the argument put forwarded by the learned counsel for the prosecution as well as defence, it appears that in this case the prosecution side has failed to produce any solid and concrete evidence against the accused person. In this case, the evidence of P.W.2, who is the informant of this case appears to be not in conformity with the fact as alleged in the FIR. That apart PW-2 who is the informant of this case has also expressed her ignorance about the fact as alleged in the FIR, and such kind of ignorance about the fact as alleged in the FIR, on the part of the informant definitely weaken and reduced the weight and authenticity as well as credibility of the whole prosecution case. In this case the prosecution side have failed to extract any corroboration or support to build up and establish its case as alleged against the accused person from the evidence of PW-1, the victim, who is the star witness of this case. That apart non-examination of Medical Officer and Investigating Officer for the reason best known to the prosecution has also weaken the case of the prosecution. After perusing and considering the evidence on record no inference can be drawn from the evidence of any single witnesses that the accused person is in any way involved in commission of the offence as alleged.

14. In the ultimate analyses on the light of above discussion, it appears that in this case the prosecution side has failed to produce any single iota of evidence against the accused person which is sufficient to fasten the accused with the charge as alleged against him beyond all reasonable doubt. Thus, in this case the prosecution has not only failed to operate the switch of the prosecution case for ignition but could not even identify and point out the proper switch of the prosecution on the board itself and hence the court have no any alternative but to acquit the accused person from the charge as lavelled against him.

15. I therefore acquit the accused person from the charge as levelled against him. I also released the accused person from liability of bail bond and set him at liability.

Given under my hand and seal of this court on this 06<sup>th</sup> day of March/2020.

Dictated and corrected by me

Special Judge North salmara, Abhayapuri Special Judge North salmara, Abhayapuri

# **APPENDIX**

1. Prosecution Exhibits

Exhibit 1 - The statement of PW-1 u/s 164

CrPC.

Exhibit 1(1) - The signatures of P.W.1.

Exhibit 1(2)

2. Material Exhibit by prosecution

Nil

3. <u>Defence Exhibits</u> NIL

4. Prosecution Witnesses

PW-1 Miss. Chandana Sutradhar, the victim PW-2 Smti. Lakhi Sutradhar, the informant

5. <u>Defence Witnesses</u> NIL

6. <u>Court Witnesses</u> NIL

Special Judge North salmara, Abhayapuri