IN THE COURT OF SPECIAL JUDGE, DARRANG, MANGADLAI

Present: Sri G. Baruah

Special Judge, Darrang, Mangaldai

Reference : Spl (POCSO) Case No.04/15

Complainant : State of Assam

Vs

Accused : Mania Ali

Charge: U/S-354(A) IPC, R/W Sec.8 of POCSO Act.

Date of Charge : 19.09.2015

Dates of deposition : 14.10.2015

Date of statement U/S- 313 Cr.P.C. : 14.10.2015

Date of hearing : 14.10.2015

Date of Judgment : 14.10.2015

For the State : Sri G.R. Baruah, Public Prosecutor.

For the Accused : Md. N. Hoque, Advocate, Mangaldai.

JUDGMENT

PROSECUTION CASE

1. The prosecution case as appears during trial in short is that on 29.03.2015 one Miss Asifa Begum, aged 15 years, daughter of Md. Matleb Ali lodged an FIR before the O/C, Sipajhar P.S. inter-alia alleging that the FIR named accused person Md. Mania Ali used to visit their house frequently in order to marry her elder sister and also used to financially help her parents. She stated that on 28.03.2015 at around 9.30 PM the accused person has hugged her from back side and tried to give her

Rs.2,000.00. She stated that she raised hue and cry and the neighbouring people came and thereafter the accused went away and as such prayed to take necessary action.

- 2. On receipt of the FIR the O/D, Sipajhar P.S. registered Sipajhar P.S. Case No.201/15, U/S-448/354(A) IPC, R/W Sec.6 of POCSO Act and entrusted ASI Sarat Ch. Tumung to complete the investigation. During the course of investigation the I/O has recorded the 164 Cr.P.C. statement of the victim girl as well as recorded the statement of other witnesses and thereafter finding sufficient materials against the accused Md. Mania Ali submitted the charge sheet U/S-447/354(A) IPC, R/W Sec. 6 of POCSO Act. Upon submission of the charge sheet summon was issued to the accused person and on apperance he was allowed to go on bail.
- 3. After completion of appearance of the accused person and after perusal of record this court found prima-facie materials to frame charge against the accused person U/S-354(A) IPC and U/S-8 of POCSO Act and on being read over and explained the said charges the accused pleaded not guilty and claimed to be tried.
- 4. The prosecution in order to bring home the charge against the accused person has examined only three PWs including the victim and her father and one independent witness. The 313 Cr.P.C. statement of the accused person was recorded. His plea was of complete denial.

POINTS FOR DETERMINATION

- (i) Whether on 28thMarch, 2015 at around 9.30 PM the accused person used criminal force against the victim girl aged about 15 years in order to outrage her modesty?
- (ii) Whether on the same date, time and place the accused committed sexual assault upon the victim girl, and thereby committed an offence punishable U/S-354(A) IPC, R/W Sec.8 of POCSO Act?

DISCUSSION, DECISION AND REASON THEREOF

- 5. Prosecution has examined 3 PWs in connection with this case. PW1 is the victim girl. She has deposed in her evidence before this court on oath that she knows the accused person and that she lodged the FIR about 3 months ago and identified the same as Ext.1. She stated that her father had monetary transaction with the accused Mania Ali and on the day of occurrence the accused came to her residence in the evening and asked for her father. She stated that she getting feared has raised alarm. However, her father rebuked her for raising alarm and as such lodged the FIR against the accused person. She also stated that she lodged the FIR falsely against the accused. She further stated that her statement was recorded before the magistrate u/S-164 Cr.P.C. In cross-examination she deposed that the incident occurred after her final examination of HSLC but before result was declared. In cross she also stated that the accused used to visit their house frequently and that no other incident took place on that day except that the accused asked her for her father.
- 6. PW2 is Mustt. Tahjahan Begum who is an independent witness and she denied about the incident.
- 7. PW3 is Md. Matleb Ali, father of the victim girl. He deposed on oath before this court that the accused used to visit his home frequently and on the day of occurrence in the evening also he visited his home and tried to examine whether the two numbers of Rs.1,000.00 notes were genuine or not in the light of the lamp and at that time his daughter seeing the accused person raised alarm. He stated that he has rebuked his daughter of raising alarm and no other incident had happened. In cross-examination he stated that his daughter lodged the FIR without taking his permission.
- 8. While scrutinising the evidence of PW1, PW2 and PW3 it is found that PW1, the victim girl has appeared in HSLC final examination at the time of incident and at the time of deposing she was studying in HS First Year. From it, it appears that she is college going student, well educated. In her evidence she herself has not supported her own case and deposed that she lodged the FIR falsely as her father rebuked her for raising alarm after the accused person asked for her father. I have also gone through the 164 Cr.P.C. statement of the victim girl. In her 164 Cr.P.C. statement also she deposed that on the night of occurrence the accused person

touched her hand for which she raised alarm. However, during her cross-examination she categorically stated that no incident took place except that the accused asked for her father. In his evidence PW3, father of the victim girl also corroborated the evidence of PW1 that he rebuked her for raising alarm after seeing the accused person. From the above it appears that none of the witnesses have stated anything to attract any of the ingredients of Section 354(A) IPC or Section 8 of POCSO Act. In view of the above I have no hesitation to hold that the prosecution has failed to bring home the charges against the accused person.

ORDER

- 9. Accordingly the accused persons Md. Mania Ali is acquitted from all the charges. He is set at liberty forthwith.
- 10. However, his bail bond shall remain in force for next six months U/S-437(A) Cr.P.C.
- 11. The case is disposed of on contest.

Given under by hand and seal of this Court on this the 14^{th} day of October, 2015.

(G. Baruah) Special Judge, Darrang, Mangaldai

APPENDIX:

Prosecution witnesses:

PW1: Miss Asifa Begum

PW2: Mustt. Tahjahan Begum

PW3: Md. Matleb Ali

PROSECUTION EXHIBITS:

Ext.1: FIR

Ext.2: 164 Cr.P.C. statement of the victim.

Given under my hand and seal of this court on this 14^{th} day of October, 2015 at Mangaldai Court.

(G. Baruah) Special Judge, Darrang, Mangaldai

Dictated and corrected by me and each page bears my signature.

(G. Baruah) Special Judge, Darrang, Mangaldai

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