IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (POCSO) Case No. 36/2016 U/S 354 IPC r/w Section 8 of the POCSO Act

Present : Mr. P. Das

Special Judge, Morigaon, Assam.

State of Assam

-VS-

Md. Samser Ali @ Gaonbura Accused

Date of Charge : 03.02.2017.

Date of Argument : 18.01.2019.

Date of Judgment : 18.01.2019.

Appearance for the Parties

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

Advocate for the Accused: Mr. H. J. Nath, Ld. Advocate.

Mr. R. Karim, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that on 24.07.2016, one Ambiya Khatun lodged an ejahar before the Bhelowguri Police Station alleging inter-alia that on 22.07.2016, the accused person namely, Samser Ali was staying as guest at the house of the informant and in the night he tried to commit sexual assault upon her 14 years old daughter and upon her shouting he ran away under the cover of darkness. Accordingly, Bhelowguri P.S Case No. 56/2016 was registered u/s 376/511 IPC r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012 and investigation was conducted.
- **2.** After completion of investigation, charge sheet was submitted against the accused person namely, Samser Ali @ Gaonbura u/s 376/511 IPC r/w Section 8

of the Protection of Children from Sexual Offences (POCSO) Act, 2012. Subsequently, charge was framed against the accused u/s 354 IPC r/w Section 8 of the Protection of Children from Sexual Offences Act, 2012, by this Court through my learned Predecessor. The charge upon being denied by the accused led to commencement of the trial. At the trial, prosecution side examined the informant and the prosecutrix as PW-1 and PW-2 respectively. They were cross-examined by the defence.

3. Considering the nature of the evidence adduced by these two witnesses, prosecution evidence was closed, and thereafter, the accused was examined u/s 313 Cr.PC. Defence did not adduce any evidence.

4. POINTS FOR DETERMINATION

Whether the accused Samser Ali @ Gaonbura is guilty of committing an offence punishable u/s 354 IPC r/w Section 8 of the Protection of Children from Sexual Offences Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- **5.** Heard learned public prosecutor for the State and learned defence counsel for the accused person. Perused all the relevant materials from the record.
- 6. The informant, Musstt. Ambia Khatun who is the mother of the alleged victim girl/prosecutrix adduced her evidence as PW-1 in which she stated that the accused person had visiting terms with their house, and on the date of occurrence, he was staying at their house as guest and in the night, when she had gone for nature's call, accused embraced her daughter in the room and upon hearing shouting of her daughter, she came to the room and saw that the accused was embracing her daughter and upon seeing her he fled away. PW-1 further stated that upon being asked, her daughter/ prosecutrix told her that the accused caught her to commit some illegal act.

In cross-examination, PW-1 stated that on the night of the incident, accused had dinner at their house and she denied the suggestion that on the

date of the occurrence, the accused did not commit any illegal act with her daughter.

7. The alleged victim girl/prosecutrix adduced evidence as PW-2 in which she stated that at the time of incident she was aged 18 years and that the accused used to visit their house during which she developed love affairs with the accused. PW-2/prosecutrix further stated that on the date of incident while she was talking to him, her mother saw and informed her father and subsequently, her parents lodged the instant case.

In cross-examination, PW-2 stated that the accused did not commit any bad act upon her and that the accused did not commit any incident upon her. PW-2 further reiterated that at the time of the incident she was aged 18 years. PW-2 also stated in cross-examination that the accused is innocent and the case was lodged due to some misunderstanding.

8. Though the evidence of informant as PW-1 implicates the accused to some extent, but the testimony of the alleged victim /prosecutrix as PW-2 completely exonerates the accused. Going by the evidence of the prosecutrix, I am of the considered finding that there would be no element of sexual assault and/or outrage of modesty, incurring penal liability by the accused u/s 8 of the Protection of Children from Sexual Offences Act, 2012 and/or u/s 354 IPC.

In this context, it is worth mentioning that it is well settled principle in criminal trial that if two views are possible, the one in favour of the accused has to be taken and he is to be given the benefit of doubt.

- **9.** On the basis of the evidence on record as narrated and discussed above, especially the evidence of the alleged victim/prosecutrix, I am of the considered finding that the accused has to be given the benefit of doubt with regard to the charges against him.
- **10.** Consequently, the prosecution case fails due to lack of adequate evidence and the accused is entitled to be acquitted.

ORDER

- **11.** On the basis of the evidence and other relevant materials on record of the case, the accused Md. Samser Ali @ Gaonbura stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.
- **12.** His bail bonds and sureties stands discharged.
- **13.** A copy of this judgement and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.
- **14.** Given under my hand and seal on this the 18th day of January, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

APPENDIX

Prosecution Witnesses:

PW-1 : Musstt. Ambia Khatun.

PW-2 : Prosecutrix.

Defence Witness:

Nil.

Prosecution Exhibits:

1. Ext. 1 : Ejahar.

2. Ext. 2 : Section 164 Cr.PC statement

3. Ext. 2(1) to 2(3) : Signatures.

Defence Exhibits:

Nil.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

Special (POCSO) Case No. 36/2016

18.01.2019:

Accused Samser Ali @ Gaonbura is present along with learned defence counsel.

He is examined u/s 313 Cr.PC. The defence did not adduce any evidence and addresses arguments. Also heard learned public prosecutor.

The judgment, in separate sheet is ready and pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Samser Ali @ Gaonbura stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.

His bail bonds and sureties stands discharged.

A copy of this judgement and order shall be sent to the learned District Magistrate Morigaon in compliance with section 365 Cr.P.C.

The instant case is disposed of on the aforesaid terms.

Special Judge Morigaon, Assam