

Special (POCSO) Case No. 09/2019.

(U/S - 354/294 of the IPC R/W Sec. 6 & 10 of POCSO Act, 2012)

STATE

- Versus -

Biswajit Turia

...... Accused.

PRESENT: Shri D. Bhattacharjee, ASJ 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

:- 30.07.2019.

Date of recording statement u/s 313, CrPC

:- 31.07.2019.

Date of Argument

:- 31.07.2019.

Date of Judgment

:- 31.07.2019.

JUDGMENT

1. The prosecution case, in brief, is that on 04.02.2018 the informant Meena Turia lodged an ejahar with the O/c, Lala Police Station alleging that the accused Biswajit Turia is her husband and since last 1- ½ years, the accused has been committing sexual intercourse with her minor daughter i.e. the victim and as a result, the victim became pregnant and the accused administered medicine and caused her pregnancy aborted. It is further alleged by the informant that as and when, she obstructed the accused in doing so, the accused physically assaulted her and also threatened her not to disclose the same to anybody, otherwise the accused would kill her.

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- 2. On receipt of the ejahar, the same was registered as Lala Police Station Case No. 61/2019 under Sec. 376/323/313/498(A)506/34 of the IPC and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Biswajit Turia under Sec.354/294, IPC read with Sec. 6 of the POCSO Act,2012.
- 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 Biswajit Turia under Sec. 354/294 of the IPC read with Sec. 6 & 10 of the POCSO 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 2 Nos. of PW s 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.
- Heard argument of both sides. Perused the record.

Hallakara A

POINTS FOR DETERMINATION:-

- (i) Whether the accused person on 4.2.2018 assaulted his wife, the informant Mina Turia in his house with an intent to outrage her modesty and thereby the accused committed an offence punishable under Sec. 354, IPC?
- (ii) Whether the accused person on the aforesaid day and place used obscene words towards his wife, the informant and thereby the accused committed an offence punishable under Sec. 294, IPC ?
- (iii) Whether the accused committed aggravated penetrative sexual assault on the victim, the daughter of informant and thereby the accused has committed the offence punishable under Sec. 6 of the POCSO Act, 2012 ?
- (iv) Whether the accused committed aggravated sexual assault on the victim, the daughter of informant and thereby the accused has committed the offence punishable under Sec. 10 of the POCSO Act, 2012 ?

DISCUSSION, REASONS AND DECISION THEREOF:

8. The PW. 1, the victim has deposed that the accused is her father and the informant is her mother and her father always under influence of liquor used to assault her and her mother but he did not commit any bad acts with her and her father is a respected person to her. It is further deposed by the victim that on the relevant day, the accused assaulted her and her mother brutally under the influence of liquor and then, she and her mother made a plan to get him punished and accordingly, her mother filed the case. Police got her medically examined and also her statement was recorded by Magistrate vide Ext. 1.

In cross examination, the victim has stated that her father is a good man and on being tutored, she made statement before the Magistrate.

9. The PW. 2, the informant Meena Turia has deposed that the accused is her husband and under the influence of liquor, he always used to assault Contd.........P/4.



her and her daughter and as such, she came to Mohari and narrated the incident and the Mahari prepared the FIR, which she lodged with Lala Police Station. It is further deposed by the victim that the accused never did any bad act with her daughter, the victim.

In cross examination, the informant has stated that the contents of the FIR were not read over to her.

- In the instant case, the prime witness is the victim herself and her evidence bears much significance to prove the alleged commission of the offence. The victim in her evidence has unequivocally divulged that the accused i.e. her father did not commit any bad act with her and he is a respected person to her but on the relevant day, the accused assaulted her and her mother and as such, her mother filed the case to get him punished and she made statement before Magistrate on being tutored. Moreover, though the informant, who is an illiterate person, has implicated the accused person filed the ejahar putting her thumb impression but in her evidence before this Court, keeping herself in the same footing as of her daughter, the victim, the informant has made it clear that the accused never did any bad act with the victim but as the accused under the influence of liquor always used to assault her and the victim, she came to Mahari, who prepared the FIR and she filed the same with police but the contents of the FIR were not read over to her at the time when I was prepared by the scribe.
- 11. When the victim as well as her mother i.e. the informant has not implicated the accused person in their evidence with the commission of the alleged crime, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.
- **12.** Accordingly, the accused person Biswajit Turia is acquitted of the offence under Sec. 354/294 of the IPC read with Sec. 6 & 10 of the POCSO Act, 2012. Set him at liberty forthwith.

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- 13. The bail bond of the accused person stands discharged.
- **14.** 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 $31^{\rm st}$ day of July, 2019.

Special Judge, Hailakandi.

Dictated and corrected by me:

Special Judge, Hailakandi.

<u>Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.</u>

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Appendix :-

Oral evidences :-

PW. 1, the Victim.

PW. 2, Meena Turia.

Documentary evidences :-

Ext. 1- Statement of the victim

Defence did not adduce any evidence.

Special Judge, Hailakandi.