Present: Utpal Prasad, AJS Sessions Judge Karimganj at Karimganj

01.07.2017

ORDER

The accused Hira Mohan Turi and Montu Turi have been produced from custody today. The legal aid counsel for them Sri M. L. Koiri is also present. So is the learned Additional Public Prosecutor.

Statements of the aforesaid two accused persons have been recorded under section 313 of the Code of Criminal Procedure, 1973 by bringing to their notices the incriminating circumstances obtaining in the evidence recorded against them and by eliciting their responses thereto. The questions have been put to each of them in presence of their learned counsel in Bengali language which they understand and their responses have been recorded in English and thereafter read over and explained to them in Bengali language.

Heard learned Additional Public prosecutor and the learned counsel for the defence under section 232 of the Code of Criminal Procedure, 1973, 1973. Also perused the evidence on record including the exhibits.

After the victim girl (name withheld) had gone to the house of the accused Montu Turi on 20.02.2015 at 6 A. M. and had not come back even in the afternoon, her mother had started search for her and ultimately, had found the victim in the house of the brother co-accused Hira Mohan Turi and thereafter, containing the said allegations, the first information, exhibited as Ext. 2, was lodged by the mother leading to registration of Bazaricherra Police Station Case No 21 of 2015 under sections 366A/376/34 of the Indian Penal Code. After investigation, the aforesaid two accused persons were charge sheeted with the allegation of having committed the aforesaid offences and after they pleaded not

guilty to the charges framed under sections 376D and section 6 of the Protection of Children from Sexual Offences Act, 2012, they have been put to trial. The prosecution examined all the 7 witnesses enlisted in the charge sheet.

The prosecution witness No 1 has stated that when on the day of the incident, after going to the house of the accused Montu Turi, the victim had not come back till afternoon, she had started search for her and had requested Montu Turi to help her in search for the victim and he had not joined her. She has further stated that thereafter, she had gone to the residence of one Gopal Goala, one of the wiser persons of her village, who had called Montu Turi and then Montu Turi had expressed his suspicion that his brother Hira Mohan Turi might have taken the victim away. She has also stated that thereafter, the victim was recovered from the house of the accused and a meeting of 30-35 persons of the village was called to discuss the matter but Montu Turi had not turned up and she had lodged first information against the two accused persons. She has also stated that on her recovery, the victim was not able to say anything about the two accused. She has stated that the victim was aged around 17-18 years at the relevant time and has admitted that she had not stated to the investigating officer that Montu Turi had expressed his suspicion that Hira Mohan Turi might have taken the victim away.

The prosecution witness No 2 has stated that after the victim had gone missing, her mother had informed him about the same and he had joined the victim's mother in search for the victim and that after 3 days, some of the persons of the village had found the victim in Gaglacherra village whose Panchayet President had found her loitering on a road in the village. He has stated that he had asked the victim as to what had happened to her and that she had not implicated anyone including the two accused.

The prosecution witness no. 3 has stated that from his wife, he has heard that the victim's mother had filed a case against Montu Turi's brother and that rape was committed on the

victim. He has not stated anything to his knowledge incriminating any of the accused.

The victim has stated that after she had gone to Moutu Turi's house, his wife had insisted upon her to accompany her to her husband's father's house in another village and that even though, initially, she was reluctant, under pressure, she had accompanied her and that Motu Turi's wife had kept her there for 2-3 days and that as she had not come back, her mother lodged case against Montu Turi. She has clearly stated that the accused Montu Turi had not done anything to her and that she does not know Hira Mohan Turi. She has stated that she incriminated Montu Turi in her statement before the Magistrate as tutored by the police and the prosecution has not sought to disown the said statement.

Similarly, prosecution witness no 5 has also not incriminated any of the two accused persons.

The doctor who medically examined the victim has stated that the victim had given her the history of the case that she had fled with one Raj Mohan Turia, brother of the Montu Turia, of Gaglacherra of Hailakandi on 20.02.2015 at about 8 A. M. of her own will and that the victim had not given any history of violence or injury on her person by any of the accused. She has stated that on medical examination the age of the girl was between 14-17 years and that there was no sign of violence or recent sexual intercourse on her person.

The Investigating officer of this case has deposed that he had found the victim in her residence after the case was registered and he had taken the statement of the witnesses including the victim. His testimony is also of no help to the prosecution.

In view of the above, it is clear that no evidence is found in the case record against the accused Montu Turi and Hira Mohan Turi showing commission of any offence, whether charged or not, by them. Clearly, this is a case where the two accused persons are entitled to an order of acquittal under section 232 of the Code of Criminal Procedure, 1973, 1973. As such, the accused Montu Turi and Hira Mohan Turi are acquitted of the charges under section 376D of the Indian Penal Code and section 6 of the Protection of Children from Sexual Offences Act, 2012 and are set at liberty forthwith. However, their bail bonds and sureties shall stand extended till the next 6 months.

The two accused be released from custody forthwith if not required in any other case.

The case record reveals that the accused Hira Mohan Turi is suffering from head injury and has been undergoing treatment. The Superintendent, District jail shall ensure that all the medical papers are handed over to the said accused with proper instructions by the jail doctor as necessary.

Send a copy of this order to the Superintendent, District jail, Karimganj for necessary action.

Also send a copy of this order to the Secretary, District Legal Services Authority, Karimganj for payment of remuneration to the learned legal aid counsel. A copy of this order be also given to the learned legal aid counsel.

With the above, the instant case stands dismissed on contest.

Sessions Judge Karimganj