

IN THE COURT OF SPECIAL JUDGE N.S., ABHAYAPURI

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

Special Case No. 21(A)/ 2014
U/S 4 of POCSO act 2012

State of Assam
Vs
Md. Abdus Sattar Ahmed

Appearance

Smti R Choudhury -----	Ld. Addl. P.P. for the State.
Mr. S.Islam -----	Ld. Defence Counsel.
Charge framed on	30.1.2015
Evidence recorded on -----	17.3.2015/4.4.2018/ 4.5.2018/14.9.2018/ 19.12.2018 /6.2.2019
Argument heard on -----	6.2.2019.
Judgment Pronounce on-----	12.2.2019.

JUDGEMENT

1 The Case for the prosecution in brief is that on 11.2.2014 the informant Md. Abu Bakkar Sidque lodged an FIR before the officer in charge of Abhayapuri Police Station stating inter alia that about 3 years back on a day he bring one girl aged about 9 years old, the daughter of one Bicha SK of the village Barsar under Bilashipara police station and kept that girl at the house of the accused person to assists the house hold work. It has been alleged that on 11.2.2014 at about 8 A.M in the morning he came to know that the accused person committed rape on that girl. Hence the case.

2 After receiving the said FIR the officer-in-charge of Abhayapuri police station registered the same vide Abhayapuri P.S case No. 54/2014. Police started the investigation. After completion of the investigation the investigating officer submitted charge sheet against the accused person U/S 342 IPC and Section 4 of the POCSO Act, 2012.

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3 The accused person appeared before court to face the trial. The copies of all the relevant document furnished to the accused person. After perusing and considering all the relevant documents referred to u/s 173 Cr.P.C. and considering the submission put forwarded by the Ld. Spl. P.P. as well as Ld. Counsel for defence finding a prima facie case a formal charge u/s 4 of POCSO Act, 2012 framed against the accused person and the same on being read over and explained to the accused to which the accused person pleaded not guilty and claimed to be tried.

4 To bring home the charge against the accused persons in this case the prosecution side has adduced and examined as many as 10 witnesses including the informant and victim but defence examined none. After perusing and considering the evidence on record the examination of the accused U/S 313 Cr.P.C is dispensed with.

5. Point for Decision

i) Whether the accused person on 11.2.2014 at about 8 A.M at Nayapara village under Abhayapuri P.S have committed penetrative assault upon the victim, aged about 9 years and there by committed an offence punishable U/S 4 of POCSO Act, 2012.

6. Decisions 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 Spl. P.P for the State as well as Ld. Counsel for defence.

7 In this case the prosecution side has examined the informant Md. Abu Bakkar Sidque as P.W.7. The prosecution side has exhibited the FIR vide Ext.1 and Ext.1(1) is the signature of P.W.7, being the informant of this case.

8. In course of evidence P.W.7 stated that he himself have not written the FIR but only put his signature on it. P.W.7 also stated that he did not know who has written the FIR and before putting his signature on it he himself have not read out the contents of the FIR and hence he did not know what has been written in the FIR. Thus, P.W.7, who himself lodged the FIR expressed his 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 definitely weaken and reduced the authenticity and credibility of the FIR, which puts the machinery law of motion. Accordingly on this point benefit goes to defence.

9. P.W.7, who is the informant of this case during the course of evidence stated that on a day in the evening of the year 2014, the victim reported P.W.7 that while the victim was crying as no one has come from her house to bring her back to her house then the accused person rebuked her. Other than this P.W.7 is completely silent about the case of the prosecution.

10. The prosecution side has examined Mosstt. Hasina Ahmed as P.W.1 who in course of evidence stated that about one year back at about 9-30 A. M in the morning she saw a gathering of persons in front of the house of the accused person, where the police personnel were also present. P.W.1 also stated that the accused person kept a girl of Bilashipara in his house and that girl also used to go to school . Other than this the P.W.1 is completely silent about the case of the prosecution.

11. P.W.2 Mosstt. Minara Begum, who claimed herself to be the member of Mahila Somity of Nayapara village In course of evidence stated that on 11.2.2014 he heard that the accused person kept one 10/11 years old girl in his house and after hearing the fact that the accused person has assaulted and beaten that girl while she has gone to the house of the accused person to enquire the matter and while she asked and enquired that girl about the said fact the girl denied that the accused person has assaulted her. P.W.2 further stated that while she asked that girl about any physical contact with her by the accused in that occasion that girl also denied any such act on the part of the accused person .

12. The prosecution side has examined Md. Bisha SK, the father of the victim as P.W.4, who in course of examination in chief never stated a single line as alleged by the prosecution against the accused rather in course of cross examination P.W.4, the father of the victim clearly stated that the accused person never committed any misdeed with his daughter as on being asked his daughter i.e. the victim told him that the accused person never

committed any misdeed or wrong with her. That apart, it also reveals from the evidence of P.W.4 that the public asked and insists as well as tutor his daughter, the victim to speak against the accused that the accused person has committed misdeed with her.

13. The prosecution side has also examined Mosstt. Runa Begum and Md. Sahajan Ali as P.W.5 and P.W.9 respectively. It is revealed from the evidence of P.W.5 and P.W.9 that while no one has come to bring back the victim to her house and at this while the victim was crying the accused only rebuked the victim. Other than this both P.W.5 and P.W.9 are completely silent about the case of the prosecution.

14. The prosecution side has examined Md. Manan Ahmed as P.W.6, who in course of examination in chief although stated that about 4 years back he heard that the accused person rape the victim but P.W.6, who has not only failed to disclose the source of his information about the said incident but in course of cross examination also clearly stated that later on, he came to know that the fact which he heard that the accused person rape the victim, was actually in fact false and not true. That apart, P.W.6 in course of cross examination clearly stated that so far his information is concerned the accused person possessed a good moral character.

15. The prosecution side has examined Md. Abdul Kalam and Mosstt. Dolimon Nessa as P.W.,8 and P.W.10 respectively. After perusing and considering the evidence on record, the evidence of both P.W.8 and P.W.10 appears to be not helpful to the prosecution as because both P.W.8 and P.W.10 in course of evidence clearly stated that they have no knowledge about the case of the prosecution.

16. Now, let us discussed and assessed the evidentiary value of the victim who was examined by the prosecution as P.W.3. P.W.3, the victim in course of evidence stated that since 4 to 5 years back she used to stay in the house of the accused person and also carry out her study from there. It also revealed from the evidence of P.W.3 that on a day while she was crying and weeping in order to come to her house, some women of the village bring her to the police station. In this case it appears that after stating the above fact in her

evidence, P.W.3, the victim, was declared hostile by the prosecution and the prosecution contradicted P.W.3 with her previous statement U/S 161 Cr.P.C, but the prosecution has failed to confirm the said contradiction as suggested by the prosecution P.W.3 as the prosecution side has failed to confirm the said contradictory statement of P.W.3 as stated by her in course of her statement U/S 161 Cr.P.C before the investigating officer by examining the investigating officer of this case. Whatever it may be, in my considered view a contradictory statement of a prosecution witness to its previous statement U/S 161 Cr.P.C and confirmation of such a contradictory statement of a witness who was declared hostile by the prosecution, by the investigating officer, who recorded the statement of such a witness u/s 161 Cr.P.C, is nothing but only the confirmation of the statement of a witness U/S 161 Cr.P.C, which carries no value in the eye of law unless and until the said statement was deposed by the witness in course of the trial under oath. It also reveals from the evidence of cross examination of P.W.3 that the accused person kept her in his house like his own daughter and before two days of going to the police, she told the accused that she want to go to her house and at this the accused person told her that her father will come and take to her house, but while her father did not come to take her to her house she was weeping and crying in front of the house of the accused and at this some neighbouring women came and taken her to the police station. P.W.3 nowhere in course of evidence stated a single line against the accused person as alleged against the accused by the prosecution.

17. The above is the threadbare discussion of the evidence on record.

18. After perusing and considering the evidence on record in its entirety 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 concert evidence against the accused. In this case, the evidence of P.W.7, who is the informant of this case expressed his ignorance about the fact as alleged in the FIR and such kind of ignorance about the case of the prosecution on the part of the informant obviously weaken the case of the prosecution. Again the evidence of P.W.7, the informant of this case also appears to be not in conformity with the fact

as alleged in the FIR. That apart, even P.W.3, the star witness of this case, the victim, who was declared hostile by the prosecution extend no any support to the prosecution to prove the fact as alleged against the accused person. The prosecution side has also failed to inspire any corroboration or support from the evidence of other witnesses including P.W.4 the father of the victim. After perusing and considering evidence on record no any inference can be drawn from the evidence of any single witness that the accused person is in any way involved in commission of the offence as alleged.

17. 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 identifying and point out the proper switch of the prosecution on the board itself, hence the court have no any alternative but to acquit the accused person from the charge as levelled against him.

18. I therefore acquit the accused person from the charge labelled against him. I also released the accused person from liberty of bail bond and set him at liberty.

Given under my hand and seal of this court on this 12th day of Feb, 2019.

Dictated and corrected by me.

Special Judge
North salmara, Abhayapuri

Special Judge
North salmara, Abhayapuri

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APPENDIX

1. Prosecution Exhibits

Ext. 1	The FIR
Ext.1(1)	The signature of P.W.7

2. Material Exhibit by prosecution Nil

3. Defence Exhibits NIL

4. Prosecution Witnesses

PW1	Mosstt. Hasana Ahmed
PW2	Mosstt. Minara Begum
PW3	The victim.
PW4	Md. Bisha SK
PW5	Mosstt. Ranu Begum.
P.W.6	Md. Manan Ahmed
P.W.7	Md. Abu Bakkar Sidque, informant
P.W.8	Md. Abdul Kalam
P.W.9	Md. Sahajan Ali
P.W.10	Mosstt. Dolimon Nessa.

5. Defence Witnesses NIL

6. Court Witnesses NIL

Special Judge
North Salmara, Abhayapuri.