

THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

C.A. No.4(3) 2011

Appellant : Md. Jamanur Rahman
- Vs -

Respondent : State of Assam
Represented by the P.P, Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri Ashraful Islam, Advocate for the Appellant.

Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 24-09-2013

Date of Judgment : 07-10-2013

J U D G M E N T

This Criminal Appeal is projected against the judgment and order of conviction dated 21-07-2011 passed by the learned Sub-Divisional Judicial Magistrate (M), Bilasipara in GR (BLP) Case No.28/2010 whereby the appellant was convicted U/s.354 I.P.C. and sentenced to pay a fine of Rs.3000/- in default to suffer simple imprisonment for one month.

2. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction, the appellant Jamanur Rahman assailed the impugned judgment on a number of grounds, which are narrated in the Memo or Appeal.

3. During hearing the L.C.R. is called for and learned P.P. is only heard in the absence of learned counsel of the appellant.

4. On a minute perusal of the material particulars available in the L.C.R. in the light of the impugned judgment and order of conviction, the facts materials leading to the filing of this appeal appears as follows:

That one Safiyal Hoque lodged an ejahar before the Bilasipara Police Station on 29-01-2010 whereby it was alleged that the accused appellant is Head-Master of Jogir Mahal L.P. School. On 27-01-2010 after the Mid-Day-Meal, when his daughter Sweety Begum went back to class room to take her books to come back home, the accused Jamanur Rahman called her to his room and caught her and kept on his lap. The

accused person touched her breast and started to squeezing her. Upon making hue and cry, the student Rakiful and Ikramul went to the spot and witnessed the occurrence. On next day, i.e. 28-01-2010 at around 1-30 p.m. when he went to the house of the accused person and asked about the occurrence, then, the accused person hurled obscene language and threatened him for dire consequences.

5. The Bilasipara Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid charge-sheet against the appellant U/s.354/294/506 I.P.C.

6. On the appearance of the accused person the particulars of offences under aforesaid Sections of law were explained to the accused person to which he pleaded not guilty.

7. The During trial prosecution side after examining altogether 12 (twelve) P.Ws closed their side. Statement of the accused was recorded. Learned trial Court below heard the arguments of the case and finally delivered the impugned judgment whereby aforesaid sentences were recorded.

Thus the occasion of appellant to prefer the instant appeal.

8. Now the point for determination in this case will be as to whether the materials surfaced in the testimonies of the P.Ws would justify conviction of the accused U/s.354 I.P.C or not?

DECISIONS AND REASONS THEREON

9. Here in this case the accused is Headmaster of a L.P. School to which the victim is the student. It is alleged that accused had outraged the modesty of the victim by touching her breast and also by squeezing the same and also it is alleged that the accused had made attempt to remove panty of the victim.

10. The victim, her parent so also other persons are examined in this case. Since the offence is committed against the victim Sweety Begum, so at the very outset let us have a look at the evidences of the victim.

11. The victim Sweety Begum is examined as P.W-4. During trial and in her examination-in-chief stated that one year ago the incident had taken place. At about 1-30 p.m. on the date of incident and at the relevant point of time and after Mid-Day-Meal at the school, the accused Jamanur Rahman called her and touched her

breast and also attempted to remove her panty. Then she raised alarm. Police recorded her statement. Ext-2 is her statement U/s.164 Cr.P.C. wherein Ext-2 (1) is her signature.

During her cross-examination it is revealed that on the date of incident the Assistant Teacher of the school and also student namely Rakiful and Ikramul were also nearing to the place of occurrence but student namely Ashma Khatun and Roshana Khatun were not present.

On the other hand, the P.W-4 in her statement recorded U/s.164 Cr.P.C. and exhibited under Ext-2 stated that on 27-01-2010 at about 1-30 p.m. while after completion of Mid-Day-Meal, she was proceeding to the class room to take back her books and to go to home, then she was called by the accused and thereafter accused kept her on his lap and also squeezed her breast. Thereafter she raised alarm and hearing her cries the student namely Rakiful and Ikramul went to the place of occurrence and they had also seen the incident. The aforesaid statement under Ext-2 was recorded on 05-02-2010 whereas the incident had occurred on 27-01-2010. The aforesaid Rakiful Hoque was also examined as P.W-7.

12. During trial the P.W-7 states in his examination-in-chief that the incident had taken place in the year 2010 and he did not see anything.

During cross-examination, the P.W-7 stated that in the year 2010 he was pursuing his studies in the class-IV. Head Master Jamanur Rahman is a good person. On 27-01-2010 he went to the school and the victim Sweety Begum was also along with him and on that day books were distributed and he accompanied Sweety Begum to their house. According to him Jamanur Rahman did not misbehave.

13. P.W-8 during trial and in his examination-in-chief states that the incident had taken place in the year 2010 there was quarrel between the teachers and on that day no incident as alleged had taken place.

14. So, from the testimonies of P.W-4, P.W-7 and P.W-8, it is revealed that though P.W-7 and P.W-8 were stated to be the eye witnesses of the incident by the P.W-4 but P.W-7 and P.W-8 did not at all support the P.W-4. On the other hand, P.W-7 and P.W-8 were not declared hostile by the prosecution.

15. Now, let us have a look at the evidences of other witnesses.

16. P.W-1 is one Md. Abdul Aziz. From the testimonies of the P.W-1, it is revealed that P.W-1 had not at all supported the story of the informant and according to the P.W-1, the entire story of the informant was a false one and the informant lodged a false F.I.R. The P.W-1 was not declared hostile by the prosecution.

17. P.W-2 Ashma Begum being the student of the school in question had also not supported the story of the informant and according to her entire story of allegation against Headmaster is false one. The P.W-2 was also not declared hostile by the prosecution.

18. P.W-3 Md. Sofiyal Hoque being the informant during trial and in his examination-in-chief states that on the date of incident and when his daughter Sweety Begum went to the school the Headmaster Jamanur Rahman called her to his room and also attempted to outrage her modesty. Then he lodged the ejahar under Ext-1 wherein Ext-1 (1) is his signature.

During cross-examination the P.W-3 stated that he cannot remember the date and time of the incident. After two days of the incident he lodged the ejahar thought he heard about the incident during evening on the date of incident. At the time of incident he was not present at the house nor he can say as to the contents of the ejahar.

From the testimonies of the P.W-3, who happens to be the material witness of this incident, it is revealed that though he heard about the incident on the date of incident itself, however, he lodged ejahar after two days of the incident and he did not explain the reasons of delay in lodging the ejahar during trial.

19. P.W-5 Mamtaz Begum did not at all support the prosecution story. She stated that on 27-01-2010 no such incident had taken place and she being the president of the School's Village Education Committee, distributed books and they fed Mid-Day-Meal to the pupil of the school. The P.W-5 was also not declared hostile by the prosecution.

20. P.W-6 Jubayur Hussain has also deposed in the same tune and manner as that of P.W-5. He was also not declared hostile by the prosecution.

21. P.W-9 Roshana Bibi is the mother of the victim. According to her on the date of incident her daughter went to school. After returning from school she was weeping and on being asked, her daughter told her that accused Jamanur Rahman had seen her in bad eye. Then she told her husband about the incident.

22. P.W-10 is Md. Ducttor Ali, according to him on the date of incident quarrel took place between accused and the informant in regard to the rice of the school and then the case was lodged. It appears that the P.W-10 had also not supported the story of the prosecution.

23. P.W-11 Md. Bulbul Hussain had also deposed in the same tune and manner as that of P.W-10.

24. P.W- 12 Sri Jatin Ch. Nath is the I.O. whose evidences are appearing to be record only.

From his testimonies, it is revealed that the F.I.R. of the case was filed after three days of the incident and delay has not been explained. Further, it is revealed that P.W-2 Ashma Begum deposed before him that facts are false as stated in the F.I.R. Also students stated that they did not see any incident. Some of the student told him that the victim Sweety Begum told falsely and P.W-6 stated that there was not such incident and the informant gave a false case as he claimed rice from the school. P.W-5 also stated that the case was false and he was busy in the distribution of the books. The victim was accompanied by her father.

So these are all about the evidences on record.

25. From a careful perusal of the entire evidences on record, it is seen that there are only solitary evidence in support of the prosecution story and the said evidence is belonged to child witness, who is aged about only eleven years. It is alleged that the accused Head Master misbehaved her in the school and she was weeping . Thereafter she told about the incident to her mother and ultimately after three days of the incident the ejahar was lodged. The causes of delay in lodging the ejahar have not been explained during trial. This apart, the incident had taken place on 27-01-2010 whereas, statement of the victim U/s.164 Cr.P.C. was recorded on 05-02-2010 i.e. after nearly about 7 days. The P.Ws, excepting the victim, who supported the prosecution story are not the eye witnesses of the incident whereas, remaining P.Ws excepting the I.O. & victim and who were present at the school in question on the date of incident and at the relevant point of time had not at all supported the story of the victim but they were not declared hostile by the prosecution. Thus in my considered opinion following circumstances have surfaced during trial.

1. The victim who supported the prosecution story is a child witness. Her story has not been corroborated by other P.Ws, who according to the victim were present at the P.O. and on the date of incident.

2. the P.Ws who were stated to be present at the P.O. on the date of incident and who did not at all support the story of the victim were not declared hostile by the prosecution.

3. Ejahar of the case is lodged after making inordinate delay of three days but the reasons of delay had not been satisfactorily explained by the prosecution during trial.

4. The statement of the victim accordingly was recorded after about 7 days of the incident and the causes of delay in recording the statement of the victim U/s.164 Cr.P.C. has not been explained during trial.

5. The ejahar under Ext-1 was lodged on 29-01-2010. The case was registered on 01-02-2010 and it was placed before the Magistrate on 02-02-2010.

26. In my considered opinion and bearing the aforesaid aspects in mind, it is felt that the circumstances revealed during trial would not be sufficient to arrive at a concrete finding that the accused Headmaster outraged the victim on the date of incident and at the relevant point of time inasmuch as it will not be safe to base the conviction of the accused on the uncorroborated testimonies of the child witness.

27. Thus, the evidences so far surfaced are not at all sufficient to bring home the offence alleged of against the accused appellant beyond all reasonable doubts. Therefore, the accused ought to have been given benefit of doubt. But considering the impugned judgment it is found that the learned trial Court below did not at all consider the aforesaid aspects in arriving at just and proper decision of this case. As such impugned judgment is liable to be set aside. Accordingly the impugned judgment and order of conviction is hereby set aside.

28. In the result, the appeal is allowed on contest without cost and accused is acquitted on benefit of doubt and set at liberty forthwith. Judgment is delivered in the open Court. Send back the L.C.R. alongwith a copy of the judgment.

Given under my hand and seal of the Court on this 7th day of October, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.