IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BAJALI, PATHSALA

Spl. POCSO Case No. 14 of 2019

U/S - 366 IPC R/W Sec. 4 of POCSO Act. 2012.

State

- Versus -

Nayan Das

: Accused person.

Present: Sri L.K. Saikia, AJS, Additional Sessions Judge, Bajali, Pathsala.

Appearance & particulars :-

For the State : Smti. Dhira Devi Ld. Addl. P. P. For the accused persons : Smti. Tribeni Kalita, Ld. Advocate.

Dates of recording evidences: 04-12-2019.

Date of recording statements u/s 313 Cr.P.C. : 20-11-2019.

Date of Argument : 04-12-2019
Date of Judgment : 04-12-2019.

JUDGMENT

1. The prosecution case in brief, is that, one Kamal Das lodged an ejahar on 27-05-2018 with the O/C Patacharkuchi Police Station alleging, *inter-alia*, that on 26-05-2018 his sister X(victim) was missing and on 27-05-2019 at around 8 a.m. at Pathsala Highway chowck he found his sister and on being asked where she was on last night. Then she told him that she was stayed with one Junmoni Das at her rented house near Patacharkuchi C.R.P.F. camp. On that day at about 8 p.m. one unknown person came to her house and forcefully committed rape upon her. Hence, this case.

- **2.** On receipt of the ejahar, it was registered as Patacharkuchi P. S. Case No. 342/18 u/s 4 of POCSO Act.
- and prepared sketch map, recorded the statements of witnesses including the victim girl, conducted medical examination of the victim, produced her before the Court wherein the Ld. Magistrate recorded her statement u/s 164 Cr.P.C, and after completion of investigation, having been found *prima-facie* case, the I/O filed charge sheet u/s 342/366/376 IPC r/w Sec. 4 of POCSO Act, 2012 against the accused Nayan Das. Thereafter, the accused was arrested and forwarded to the Court.
- 4. On being summoned the accused person entered his appearance and copies were furnished to him and after hearing the learned Addl. P. P. appearing for the State and the learned defence counsel and after perusal of materials available on record u/s 173 Cr.P.C., having been found sufficient grounds for presuming that the accused person has committed the offence, framed the formal charge u/s 366 IPC r/w Sec. 4 of POCSO Act, 2012. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried and hence this judgment.
- 5. The prosecution in order to prove its case examined 2 (two) number of materials witnesses i.e. the informant and the victim and after recording their evidences the Ld. Addl. PP submits that the vital material witnesses have already been examined and there is no chance of further development of this case and hence, prays to close the evidence.
- **6.** Heard the Ld. Addl. PP appearing for the state. Perused the case record and considering the submission put forwarded by the Ld. Addl. PP the evidence of prosecution side is closed.
- 7. The defence plea is of total denial. The accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations leveled against him by the prosecution witnesses. The defence side has not adduced any defence evidence.

8. Heard argument of learned Addl. P. P. and the learned defence counsel.

9. POINTS FOR DETERMINATION

- (i) Whether the accused person on 26-05-2018 kidnapped the victim i.e. sister of informant Sri Kamal Das and took her to Guwahati with intent that she may be compelled (or knowing it to be likely that she will be compelled) to marry against her own will(or in order that the said woman will be forced or seduced to Illicit intercourse) and thereby committed an offence punishable u/s 366 IPC?
- (ii) Whether the accused person on the same, date, time and place at night by inducing had committed penetrative sexual intercourse with the victim and thereby committed an offence punishable u/s 4 of POCSO Act. 2012 IPC?

EVIDENCE OF THE WITNESSES

10. PW-1 Kamal Das deposed that victim is his sister. He does not know the accused person, who is present in the Court today. At the time of happening of the incident the age of his sister was about 17 years and 4 months and she was reading in H.S. 2nd year. In the FIR he mentioned the name of the accused person as Junmani Das. On 27/05/2018 at about 7.30 to 8 a.m. he came to Pathsala town and then met his sister at Pathsala National High Way chowk. While he asked his sister where she stayed in the last night then she replied that she stayed in the house of Junmani Das at Patacharkuchi. He has known that his sister has a love affairs with one Nayan Das before 4 to 5 months from the date of happening of the incident and his house is situated at Ahopa. He has filed the FIR against Junmani Das on suspect that she had kept his sister along with her. Exhibit No. 1 is the FIR. Police had seized the H.S.L.C. admit card of his sister as handed over by him and it was given jimma to him. Ext. 2 is the seizure list. He does not know why police had sent Nayan Das to the Court.

In cross-examination, PW-1 deposed that he lodged the FIR as stated by his sister. He has not mentioned the name of Nayan Das in the FIR. While police asked him about the incident he stated about Junmani Das only but not against anything about Nayan Das. He does not know about Nayan Das but heard from his sister that she has love affairs with Nayan Das. He does not know how Nayan Das involved into this case even do not know how Junmani Das was also involved into this case.

11. PW-2 X(victim) deposed that informant is her brother. She knows the accused Nayan Das, whose house is situated at Ahopa. She knows him since they have love affairs for last 6 months. At the time of happening of the incident her family members did not know that she had love affairs with Nayan Das. She has forgotten the month of happening of the incident. One day she came to Pathsala at about 8.30 a.m. by tempoo without intimating to anyone of her house and at Pathsala main chariali chowk she met Nayan Das there and he took her to the house of Junmani Das at Patacharkuchi. She does not know whether Nayan Das had any relation with Junmani Das. Junmani was resided in a rented house at Patacharkuchi. At the rented house of Junmani, she stayed there for one night. She does not know what Junmani Das was doing but her husband was an employee. On the next day she returned back to Pathsala by bus from Patacharkuchi and on reaching at Pathsala she met her own brother Mrinmay Das and cousin brother Arup Das. They asked her where she stayed on the last night but due to fear she did not tell them anything. Thereafter they took her to the Patacharkuchi police station and she met her another brother Kamal Das there. Her brother Kamal Das lodged the FIR at Patacharkuchi P.S. on that day. After filling the FIR police asked her about the incident. At the time of happening of the incident her age was about 17 years and she was reading in H.S. 2nd year at Pub Hastinapur college. On the next day police took her to FAAMC, Barpeta for medical examination but she refused to do medical examination as nothing had happened with her. Thereafter police produced her before the Court wherein the learned Magistrate had recorded her statement and after that she was given jimma to her family members. Exhibit No. 3 is her statement.

In cross-examination, PW-2 stated that on the day of the

incident she was at Patacharkuchi and during the stay at Patacharkuchi nobody misbehaved her. Nayan Das is in no way involved into this case. She does not know in what circumstances and why her brother lodged the FIR even she does not know what was written in the FIR. Nothing had happened as stated before the Magistrate while police produced her in the Court after filling the FIR by her brother. Due to fear of her brother she stated something before the Magistrate. Nayan Das did not misbehave her in any way. She willingly went to Patacharkuchi with Nayan Das to the house of Junmani Das even stayed for that night nobody misbehaved her. Still she is continuing her study and now a student of B.A. 1st Semester. On suspect her brother lodged the FIR as she came out from home without intimating to anyone. She has no any grievances against Nayan Das because of that he is innocent.

DISCUSSIONS, DECISIONS, AND REASONS THEREOF

- **12.** Perused the case record and also gone through the provision of law.
- pw-1 the informant stated that he lodged the FIR as stated by his sister. He has not mentioned the name of Nayan Das in the FIR. While police asked him about the incident he stated about Junmani Das only but not against anything about Nayan Das. He does not know how Nayan Das involved into this case.
- **14.** PW-2 the victim stated that on the day of the incident she was at Patacharkuchi and during the stay at Patacharkuchi nobody misbehaved her. Nayan Das is in no way involved into this case. She does not know in what circumstances and why her brother lodged the FIR even she do not know what was written in the FIR. Nothing had happened as stated before the Magistrate while police produced her in the Court after filling the FIR by her brother. She willingly went to Patacharkuchi with Nayan Das to the house of Junmani Das even stayed for that night nobody misbehaved her. On suspect her brother lodged the FIR as she came out from home without intimating to anyone. She has no any grievances against Nayan Das because of that he is innocent.

- **15.** On precise analysis and scrutiny of evidence on record, it is found that the instant case has been arisen out of suspicion of the fact. On the day of incident the victim met with the accused voluntarily as she loves the accused since long prior to this incident. The FIR was lodged by the informant as stated by his sister but his sister i.e PW-2 stated that she do not know why and in what circumstances her brother had lodged the eahar. It is also stated by her that the accused person no way involved into the alleged occurrence. From the evidence of PW-1 it comes to light that he do not know anything about the incident. Exthibit No.1 FIR reveals an another story which is not identical with the evidence of the informant i.e. PW-1. Moreover the FIR do not reflect the name of the present accused person even PW2 victim had also stated that the accused person was in no way connected with this case. FIR alone cannot prove as unless forwarded by supporting evidence but in the instant case even the fact and incident narrated in the FIR is also different with the evidence of PW-1 and PW-2.
- **16.** Court cannot go beyond the evidence, Court is to confine only under evidence on record. The evidence available on record do not shows any impetus that the accused person was ever committed the offence charged.
- 17. In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as required under the law.
- **18.** Accordingly, the accused Nayan Das is acquitted of the offences charged u/s 366 R/W Sec. 4 of POCSO Act. 2012 and set him at liberty forthwith.
- **19.** The bail bond and affidavit of the accused person will remain in course for an another period of another 6 (six) months u/s 437 (A) Cr.P.C.
- **20.** A copy of this judgment be sent to the District Magistrate, Barpeta u/s 365 Cr.P.C. for information.

21. Judgment is pronounced and delivered in the open Court in presence of both the parties and I put my hand and seal of this Court on this 04th day of December, 2019.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictated & Corrected by me

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

APPENDIX:-

Oral evidences:-

PW-1 Kamal Das

PW-2 X(victim|)

Documentary evidence :-

Ext. 1 - FIR

Ext. 2- Seizure List.

Ext. 3- Statement of the victim.

Defence evidence.

NIL

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.