IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 78/2018 U/S 366(A) IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-27.09.2018

State of Assam

- Vs -

Sikandar Ali..... Accused

Date of Recording Evidence on - 09.11.2018, 13.12.2018

& 20.06.2019

Date of Hearing Argument on – 20.06.2019

Date of Delivering the Judgment on – 20.06.2019.

Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Md. Muffazel Hoque, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 11.06.2018 one Bisheswar Das lodged an FIR in Sorbhog P.S. stating inter alia that his daughter (X) age about 17 years was kidnapped by accused named in the FIR and kept her confined somewhere else. Hence the case.
- 2. Following the information police registered a case being Sorbhog P.S. case No 137/18 u/s 366(A) IPC and investigated the case.
- 3. During the course of investigation, police recorded the statement of the witnesses, recorded the statement of the witnesses, sent the victim girl for medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C. and arrested the accused person. On conclusion of investigation police finally laid the charge sheet u/s 366 (A) IPC R/W section 4 of POCSO Act.

- 4. During the course of time, when accused person appeared in court after due compliance of section 207 Cr.P.C. formal charge u/s 366(A) IPC and section 4 of POCSO Act were framed after hearing both sides. The particulars of the offences on being read over and explained, accused pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution examined only 5 witnesses including the informant and the alleged victim. However, considering the nature and quality of evidence adduced by the star witnesses of the prosecution including the informant giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

7. Now point for determination ;-

- 1. Whether on 11.06.2018 at about 7 pm accused kidnapped the victim girl (X) aged about 17 years with a view to compel her to marry or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person including accused as alleged?
- 2. Whether on the same day and time accused Sikandar Ali committed sexual assault on the victim girl as alleged?

8. **Discussion, Decision and reasons for such decision** :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

9. Before going to discuss the evidence on record it would be useful to refer section 366-A IPC.

"Section 366-A IPC: procreation of minor girl:`-Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- 10. On perusal of section 366-A IPC the following ingredients are found:
 - 1) The accused induces a minor girl below the age of 18 years;
 - II) she was forced to go from any place or to do any act;
 - III) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 11. **Section 4 of POCSO Act**: Punishment for penetrative sexual assault whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life, and shall also be liable to fine.
- 12. Now, in the context of the offence u/s 366-A IPC and section 4 of POCSO Act, 2012 let this court examine what the witnesses have said in this regard.
- 13. PW-1, Bisheswar Das deposed that on 11-06-18 at about 3-4 am his daughter was found missing of his house, but after 6 days she was recovered from Bilashipara in the district of Dhubri with Sikandar Ali. His cross examination he however stated he do not know how his daughter disappeared and do not know whether his daughter had any affairs with accused.
- PW-2 , mother of the victim girl but she do not know the actual age of her daughter. She dined that her daughter had eloped with accused.
- PW-3, Dinesh Das also deposed that his sister was found missing from the house about 6 months back. His cross examination he stated that he do not know whether his sister affairs with accused and accused had ever visited his house.
- PW-4, Rameshwar Nath also almost negated the case as he heard about the incident and not aware of other developments.
- PW-5, the victim girl in her evidence deposed that she voluntarily eloped with accused as a result of her affairs with him since long and now living as husband and wife.
- 14. On careful evaluation of the evidence of PW-1 to PW-5 what crystallizes before this court is that the alleged victim girl eloped with accused on her own sweet will without any force or pressure because she fell in love with accused

Sikandar Ali, even though, in the FIR (Ext.1) it was alleged that accused kidnapped her by force. But in her statement before Magistrate the victim girl clearly stated that she had been forcefully taken by accused and had physical intercourse with her , but she negated the entire story narrated by her before Magistrate u/s 164 Cr.P.C. while she deposed her evidence in court. Therefore, it appears that though the victim girl stated that she was forcefully kidnapped, but as it seems it was she voluntarily went with accused. In her deposition in court on oath she no where stated that accused Sikandar Ali had influenced her or forced her to move from her house to another place. The another important aspect is that now the girl has been living with accused Sikandar Ali as husband and wife. Moreover, the prosecution has not proved the minority of the girl by documentary proof.

- 15. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Sikandar Ali u/s 366-A IPC and section 4 of POCSO Act as there was absolutely no materials emerged for having found the accused person guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Sikandar Ali from the offences u/s 366-A IPC and section 4 of POCSO Act on the ground of insufficient evidence and set them at liberty forthwith.
- 16. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let the case record be consigned to record room after completing the formalities.
- 19. Given under my hand and seal of this Court on this 20th day of June, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 5 nos. of witnesses:-

PW-1 = is Bishewar Das, the informant.

PW-2 = is Dipti Das.

PW-3 = is Dinesh Das

PW-4 = is Rameswar Nath.

PW-5 = is Minakhi Das @ Minara Begum, the alleged victim girl.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.