IN THE COURT OF THE SPECIAL JUDGE :::::::::::: HAILAKANDI

Special (POCSO) Case No. 10/2018.

U/S - 366(A)/376 of the IPC read with Sec. 4 of POCSO Act

State

- Versus -

Badrul Islam Mazumder @ Sakiron

...... Accused.

PRESENT :- Shri D. Bhattacharjee, AJS, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri A.H. Laskar, Ld. Advocate.

Dates of recording evidence :- 6.8.2018, 6.5.2019, 20.8.2018,

15.9.2018, 27.11.2018, 25.1.2019, 28.3.2019 & 6.5.2019.

Date of recording statement u/s 313, CrPC :- 10.05.2019.

Date of Argument

:- 10.05.2019.

Date of Judgment

:- 10.05.2019

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JUDGMENT

1. The prosecution case, in brief, is that on 19.04.2018 the informant cum victim lodged an ejahar with the O/c, Hailakandi Police Station alleging that on 17.04.2018 in the night at about 11 PM while she went out of her house to attend nature's call, the accused person Sakiran appeared there and from her behind, caught her and by gagging her mouth, forcefully kidnapped her and took her to Balikandi Tea plantation, wherein the accused person committed rape on her for the whole night and on the following morning, the accused took the victim to a place near the house of one



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Ayesha Begum at Sibuttar and leaving her there, the accused fled away.

- 2. On receipt of the ejahar, the same was registered as Hailakandi Police Station Case No. 283/2018 under Sec. 366/376 of the IPC and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Badrul Islam Mazumder @ Sakiron under Sec. 366, IPC read with Sec. 4 of the POCSO Act,2012.
- 4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Anwar Hussain Mazumder @ Nena under Sec. 366(A)/376 of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

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In the instant case, the prosecution has examined 9 number of PWs including the victim cum informant of the case. The accused person has been examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

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Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION:-

- (i) Whether the accused person induced the victim to go with him with intent that she may be or knowing that she would be forced or seduced to illicit intercourse, as alleged?
- (ii) Whether the accused person committed rape on the victim, as alleged?
- (iii) Whether the accused committed penetrative sexual assault on the victim, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF:

8. The PW. 1, the victim has deposed that on the relevant night at about 11 PM while she came out from her house to attend natures call, the accused appeared there and by gagging her mouth forcefully got her boarded in an auto rickshaw and took her to Balikandi Tea Estate where the accused kept her whole night and committed rape on her twice. At the relevant time, she was 17 years old.

In cross examination, she has stated that she had stated before Magistrate that since 2 years before the incident, she had love affair with the accused. Due to the rape, there was bleeding from her private parts.

During her further cross examination, she has stated that she had stated before Magistrate that at the relevant time, she was 18 years old and she on her own will, eloped with the accused. She has further stated that she married the accused and at present, she is living with the accused as his wife.

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victim, has deposed that on the relevant night, her daughter went missing and thereafter, they made search for her. On the next day, her sister informed her over mobile phone that the victim went to her house and then, she and her son went to her sister's house and found her daughter there and her daughter reported that the accused kidnapped her to Balikandi Tea Estate and kept her there for whole night and committed rape on her twice.

- **10.** The PW. 3 did not state anything as regards the matter in issue.
- 11. The PW. 4, Ayesha Begum Mazumder, the aunt of the victim, has deposed that one day, in the morning the victim came to her residence and on being asked, she told that the accused Badrul Islam took her with him and in front of her house, dropped her from a vehicle. The victim also reported that the accused took her forcefully from her residence.
- 12. Though the victim and her mother stated that the accused committed rape on the victim but the victim at the very first instance appeared in the house of PW. 4, where she did not utter a single word as regard commission of rape on her by the accused. She simply stated that the accused forcefully took her from her residence.
- 13. The PW. 5, the sister of the victim has deposed that the victim has been given marriage with the accused and at present she is living with the accused as his wife.
- 14. The PW. 7, the Medical Officer did not find any evidence of recent intercourse and any mark of violence on the person of the victim and it is opined that the age of the victim is above 16 years and below 18 years. Accordingly, if her age is computed from the lower side, still it is found she was more than 18 years of age at the relevgant time.

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- **16.** The PW. 9, the Investigating Officer, has deposed that he investigated the case and after completion of investigation, submitted charge sheet against the accused person.
- From the statement of the victim recorded under Sec. 164,CrPC as well as from the medical evidence, it is revealed that at the relevant time, she was aged 18 years and was a major girl. The evidence of victim depicts that she had love affair with the accused and she on her own will without any protest, eloped with the accused. The allegation of sexual intercourse is found to be not proved beyond reasonable doubt because the evidence of PW. 4, who is the most important witness in the case, does not disclose anything in that regard. Had the victim been raped by the accused, the victim definitely would have stated the same to her aunt, the PW. 4, because immediate after the occurrence, even before meeting her mother, she met the PW. 4.
- **18.** Further, from the evidence of the victim to the effect that she has married the accused and has been leading a happy married life, I do not find any substance in the case to saddle criminal liability on the accused person.
- 19. In view of above discussion, it is held that the prosecution has failed to prove its case against the accused person beyond reasonable doubt and hence, the accused person Badrul Islam Mazumder @ Sakiron is acquitted of the offence under Sec. 366(A)/376 IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- **20.** The bail bond of the accused person stands discharged.
- 21. Send a copy of this judgment to the District Magistrate, Hailakandi.
- The Special (POCSO) case is disposed of accordingly.

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Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this $10^{\rm th}$ day of May, 2019.

Special Judge, Hailakandi.

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Dictated and corrected by me :-

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

Dictation is taken and transcribed by Baharul Islam Choudhury,

Stenographer Grade I.

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Appendix :-

Oral evidences :-

PW. 1, the Victim.

PW. 2, Hasna Begum.

PW. 3, Bahar Uddin Laskar,

PW. 4, Ayesha Begum Mazumder,

PW. 5, Ali Akbar Laskar,

PW.6, Faruk Ahmed Barbhuiya,

PW. 7, Dr. R. Begum,

PW. 8, Rata Begum &

PW. 9, the IO.

Documentary evidences:-

Ext. 1- FIR,

Ext. 2- Statement of the victim under Sec. 164, CrPC.

Ext. 3- FIR Form,

Ext. 4- Rough sketch map,

Ext. 5- Charge sheet.

Ext. 6- Medical Report.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

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