IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.22/2019 (U/S :366A R/W Sec. 6 of POCSO Act)

State Versus Mukul Malakar, S/O Late Prafulla Malakar, Vill- Dakhin Singra, PS-Hajo, Dist-Kamrup(M).

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri A. Basumatar, P.P., Udalguri

AND

For the accused: Miss R. Khatun, Advocate.

Evidence recorded on: 26.6.2019. Argument heard on: 26.6.2019.

Judgment delivered on: 26.6.2019.

JUDGMENT

1. The prosecution case, in a narrow campus, is that on 27.3.2019 the informant Mahendra Basumatary lodged an FIR with the Officer-In-Charge, Khairabari PS alleging, inter-alia, that on 20.3.2019 at about 3 PM his daughter (real name is withheld, henceforth referred as to the victim) went to Kharirabari town but she did not return within the as usual time. So, they conducted search to locate her whereabouts but she remained traceless. On 23.3.2019 at around 6 PM he called to his daughter in her mobile phone by mobile phone of another person and she told him that the accused Mukul Malakar kidnapped her by inducement while she was going to Khairabari town and she had been kept at his house situated at hajo.

- 2. On the basis of the FIR police registered a case vide Khairabari Police Station case No.9/2019 U/S 366 IPC and launched investigation of the case. On conclusion of investigation the police laid the charge-sheet against the accused Mukul Malakar U/S 366 IPC, R/W Sec.6 of POCSO Act appeared to have been committed by him.
- 3. On receipt of the charge sheet Special (POCSO) case No. 22/2019 was registered. Thereupon, process was issued for appearance of the accused. The accused entered his appearance and supplied with the copies of the police documents U/S 173 Cr.P.C.
- 4. Whereupon, after scrutiny of the relevant papers including the case diary and having heard learned counsel of both sides a prima-facie case was made out to presume that the accused had committed the offence U/S 366A IPC R/W Sec. 6 of POCSO Act and, therefore, a formal charge thereunder was framed against the accused and the same on being read over and explained to him to which he pleaded not guilty and claimed to stand trial.
- 5. To establish its case the prosecution has examined as many as three witnesses including the informant, victim and M.O. of the case.
- 6. It may be noted at this stage that after examination of the said materials witnesses learned P.P. for the State submitted a petition whereby he has urged before this court to close the prosecution evidence without examining the remaining prosecution witnesses in view of the fact that material witnesses including the informant, victim and the M.O. adduced no iota of incriminating evidence in support of the charge levelled against the accused. That being so, the examination of the remaining prosecution witnesses would not improve the prosecution case.
- 7. On the backdrop of the petition, on close perusal of the materials on record including the evidence, I found that there is no shred of incriminating evidence in the testimony of the vital witnesses including the victim, and

therefore, examination of the remaining witnesses become redundant having no scope to improve the prosecution case, and, as such, the petition was allowed and prosecution evidence stood closed. The examination of the accused U/S 313 Cr.P.C. was dispensed with as no incriminating circumstances appeared in the evidence to put before him for explanation.

- 8. Situated thus, the points for determination in the present case are set up and framed as:-
- (1) Whether the accused on 20.3.2019 at about 3 PM on the way to Khairabari town under Khairabari PS. kidnapped the victim, a girl under eighteen years of age, with intent that she may be forced to illicit intercourse with the accused as alleged U/S 366A IPC?
- (2) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 16 years as alleged U/S 6 of POCSO Act?
- 9. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

- 10. PW1, Dr. Hiranya Kumar Gayari is the Medical Officer before whom the victim of the case was produced on 12.5.2019 for her medical examination but the victim refused to undergo medical examination and as a result no medical examination of the victim could be done. In this regard he has marked his report as Ext.1 wherein Ext.1(1) is his signature.
- 11. Close on the heels of the medical evidence of doctor (PW1) is the testimony of the victim (PW2), who is the most vital witness of the case. Her evidence on scrutiny bears no incriminating evidence against the accused to support the charges levelled against the accused. She has stated unequivocally that on the day of occurrence she voluntarily eloped with the accused due to

having love affairs prior to the occurrence and eventually she solemonised marriage with the accused and stayed in the house of the accused at Hajo. She has further revealed that at the time of occurrence she was above 18 years old. Her statement U/S 164 Cr.P.C. was got recorded vide Ext.2 wherein she disclosed her kidnapping and commission of sexual assault by the accused. But the same does not get support from her evidence before the court. Since the victim has totally retracted from the material particulars of the case as alleged in the FIR without implicating the accused and, as such, the statement of the victim U/S 164 Cr.P.C. on the other hand not being substantial evidence cannot be considered to establish the charges levelled against the accused.

- 12. Lastly, coming to the testimony of the informant Mahendra Basumatary (PW3) it appears that his evidence is hearsay one and though investigating agency was set in motion on the basis of the FIR (Ext.3), but he has also completely backtrack in contradiction to the FIR without supporting substratum of the prosecution case. Rather, he has disclosed that his victim daughter (PW2) on the day of occurrence eloped away with the accused out of love affairs and eventually got married with the accused and stayed at the house of the accused as husband and wife for about three months. He has also stated that at the time of occurrence victim was aged about 18 years.
- 13. In view of the above discussion of the evidence on record, it has emerged crystal clear that the material witnesses of the case namely, PW 2 and PW3 have given completely go bye to the prosecution case without adducing any plausible evidence to bring home the charges levelled against the accused for the reasons best known to them. Thus, the contradictory, inconsistence and unreliable evidence on record leads this court to nowhere to hold that the accused had any complicity in commission of the offences. That being so, I have no hesitation to hold that the prosecution has failed to prove its case for which accused is entitled to acquittal.

14. In the result, I am constrained to hold that the accused Mukul Malakar is not guilty U/S 366A IPC R/W Sec. 6 of the POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.

Given under my hand and seal of this Court this 26th day of June,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Hiranya Gayariii)PW2 Sonia Basumataryiii)PW3 Mahendra Basumatary

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical report.

ii)Ext.2 Statement of the victim U/S 164 Cr.P.C.

iii)Ext.3 FIR.

Dictated and corrected by me.

Special Judge, Udalguri