IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.16/2016

State of Assam

Versus

Md Eyasfizur Rahman Accused

Present: Smt.Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. Advocate for the accused: Mr S.Pahariya

Evidence recorded on : 24.5.17, 29.6.17, 17.7.17 and 09.5.18

Argument heard on : 27.8.2018

Judgment delivered on: 27.8.2018

J U D G E M E N T

- 1. The prosecution story in brief is that on 11.02.16 at about 11.30 A.M. the informant Md Monirul Islam lodged the first information report stating that on 10.02.16 the accused Yesfizur Rahman and others forcefully abducted his sister-in-law Jesmina Yesmine from his house. Hence, the first information report.
- 2. On receipt of the first information report in Kokrajhar P.S., a case has been registered under Kokrajhar P.S. case No.83/2016 under section 366(A) IPC, R.W.section 4 POCSO Act and case was endorsed to SI Sri Robin

Biswas for investigation. During investigation the I.O. visited the place of occurrence and recorded the statement of the witnesses, recovered the victim girl, medically examined her and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 366(A) IPC, R.W. section 4 POCSO Act against the accused Yesfizur Rahman. Relevant copies also furnished to the accused and my learned Predecessor framed the charge under section 366 IPC, R.W. section 4 of POCSO Act against the accused finding a prima-facie case. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. The prosecution side examined as many as seven number of witnesses including the informant, victim and M.O. as follows:

PW 1 Dr. M. Boro Phukan,

PW 2 Mosstt Farida Bibi,

PW 3 Md Sampat Ali,

PW4 Mosst Ahmed Yesmin Parbin,

PW5 Md Monirul Islam,

PW6 Md Shakir Hussain,

PW 7 Mosstt Sopina Yesmin.

4. The accused person took the plea of total denial while recording his statement under section 313 of Cr.P.C. and declined to adduce any evidence.

5. **Points for determination:**

- (1) Whether the accused abducted Jesmine Yesmine for the purpose of committing sexual intercourse?
- (2) Whether the accused committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and hearing arguments from both sides the case is decided as follows:-
- 7. PW1 Doctor stated in her evidence that on 08.3.16 the victim Jesmine Resmine was produced before her for medical examination but, the victim refused to undergo medical examination.
- 8. PW2 is the mother of the victim stated that her daughter went on missing one day and they failed to trace out her inspite of vigorous search. She further stated that the FIR was lodged due to missing of her daughter from the residence and stated that she was absent on the day of the incident. In cross evidence she stated that she did not know whereabouts of her daughter on the day of incident.
- 9. PW3 is the father of the victim stated that his daughter went on missing on the day of incident and the FIR was lodged for missing his daughter. He further stated that the accused is his son-in-law. In cross evidence he stated that the accused married his daughter. He further stated that his daughter was about 18 years old at the time of her missing.
- 10. PW4 is the victim of this case stated in her evidence that she went herself to the house of the accused and she got married with the accused and then went to Kerela and her sister-in-law brought them from Kerala. She stated that she was brought by the police to the court and her statement was recorded in the court. In cross evidence she stated that at the time of incident she was 18 years and her parents accepted their marriage. Further she stated that they have a baby out of wedlock. She further stated that they have been living peacefully as husband and wife and maintaining a good relationship with her parents. Accused neither kidnapped her nor committed rape on her.

- 11. PW5 is the informant of this case stated that the victim Yesmine Jesmine went on missing and he informed the matter to the police. He lodged the FIR against the accused person. In cross evidence he stated that the victim is his sister-in-law. He further stated that he lodged the case on suspicion. He also stated that his father-in-law arranged their marriage and they have been living peacefully as husband and wife.
- 12. PW6 in his evidence stated that he know the accused but, he does not know about any incident. He also stated that the victim Yesmine went on missing from her residence.
- 13. PW7 stated in her evidence that the informant is her husband and the victim Ahmed Jasmine Parbin is her younger sister. She further stated that her younger sister got married with the accused. But, she does not know how marriage was solemnised.
- 14. From the testimonies of PWs, it reveals that the FIR was lodged against the accused only on suspicion because of missing of the victim and at present their marriage was solemnised and they are living peacefully as husband and wife. Their marriage and relationship is accepted by the parents of the victim. So, there is no dispute in regard to the marriage and love affairs between the victim and the accused. From the testimony of the victim it also reveals that she herself went with the accused. But, vital issue is the age of the victim and the police filed the charge sheet against the accused under section 366(A) IPC, R.W. section 4 of POCSO Act considering the victim as minor one. But, there is no medical document or any other authentic document to ascertain the age of the victim. She also refused to go for medical examination. More so, the victim as well as her parents have stated that she

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was 18 years of age at the time of her missing. PW5 the informant also mentioned the age of the victim only on presumption. Thus, it is seen that the victim was 18 years of age at the time of the incident and hence her will or consent is relevant. And if she herself stated that she went with the accused by her own or got married with him, the accused cannot be convicted under section 366 IPC and section 4 of POCSO Act.

15. In view of the discussion made above, it is held that the prosecution could not establish the case against the accused Yesfizur Rahman under section 366 IPC, R.W. Section 4 of the POCSO Act beyond all reasonable doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

16. The judgment is delivered in the open court and given under my hand and seal of the court on this 27th August/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar