

IN THE COURT OF ADDITIONAL SPECIAL JUDGE..... BIJNI.

Present: N.U. Ahmed,
Addl. Special Judge,
Bijni.

Special(P) case No.01(P)/2019

U/S 366/376 of the IPC, R/W section 4 of the POCSO Act.

THE STATE OF ASSAM

-VS -

Md. Ejadul Ali @ Ejadul Islam Accused.

APPEARANCE:

Advocate for the prosecution : Mr. P. Dev Ray, Ld. Addl. P.P.

Advocate for the defence : Mrs. S. Khatun, Ld. Advocate.

Date of charge : 19-07-19

Date of evidence : 02-08-19, 16-08-19, 31-08-19 and 23-09-19.

Date of Argument : 10-10-19
Date of Judgment : 10-10-19.

JUDGMENT

- 1. The prosecution case, in brief, is that on 23-04-2018, informant Md. Saki Alam lodged an FIR with the O. C. Panbari P. S. alleging inter alia that on 21-04-2018 at about 2 PM accused Md. Islam Uddin called his 15 years old daughter "X" (name withheld, here in after known as "X") to his house and accused Md. Ejadul Ali kidnapped his daughter "X" from the house of accused Islam Uddin and accused Ejadul Ali over phone No. 9085479989 informed him about kidnapping of his daughter. He waited for their return and for this reason there was delay in lodging the FIR. Hence, the present case.
- 2. On receipt of the FIR, O. C. Panbari P. S. registered the same as Panbari P.S Case No. 35/18, U/S 365 of the IPC and started investigation. During investigation I. O. visited the place of occurrence, recorded the statement of witnesses, recorded the statement of victim under section 164 of the Cr. P. C. by Judicial Magistrate and after completion of investigation I.O. submitted charge sheet against the accused Ejadul Ali

u/\$265 of the IPC R/W section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short here in after called as POCSO Act)

- 3. After receiving the charge sheet cognizance was taken u/s 376/365 of the IPC, R/W section 4 of the Protection of Children from Sexual Offences Act, 2012, against the accused Ejadul Ali and started a Special(P) case. Copy of the relevant documents were furnished to the accused person as per provision of section 207 of the Cr. P. C. After hearing both the sides learned Advocate and on perusal of case record charge was framed u/s 376/365 of the IPC, R/W section 4 of the POCSO, Act, 2012 and the contents of charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial prosecution side examined as many as seven witnesses including informant and victim. Accused was examined u/s 313 of Cr. P. C. and recorded his statement in separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.
- 5. I have heard argument put forwarded by learned advocate of both sides. I have gone through the case record as well as evidence on record.

POINT FOT DETERMINATION

- 6. (i) What was the age of victim "X" at the time of occurrence?
 - (ii) Whether the accused person on 20.04.18 afternoon kidnapped victim "X" with intent that she may be compelled to marry against her will or she may be force or seduce to illicit intercourse with accused?
 - (iii) Whether the accused person committed rape on the victim on 21.04.18 at Mankachar?
 - (iv) Whether the accused on 21.04.18 at Mankachar committed penetrative sexual assault on victim?

:DISCUSSION, DECISION AND REASON THEREOF:

- 7. To bring home the charges the prosecution examined seven witnesses including the informant, M.O and victim. Let me scrutinize the evidence on record to decide the points.
- 8. In this case first we should decide the point No.(i) i. e. age of the "X". In the FIR

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informant stated the age of the victim 15 years at the time of occurrence. The informant examined as PW2 in this case. Informant in his evidence stated that at the time of occurrence the age of his daughter was 17/18 years. P.W.3, Laili Bibi is the mother of the victim girl. From the evidence of PW3, it reveals that at the time of occurrence age of her daughter was 17/18 years. During cross-examination, she stated that on presumption she stated the age of victim girl and the age of victim girl may be above 18 years. PW4, is the victim of this case. PW4 in her evidence stated that at the time of occurrence her age was above 18 years.

- 9. So, it appears that there is no corroboration among the PW2, PW3 and PW4 regarding the age of the victim girl. PW7 Dr. Meena Hazarika is the Medical Officer of this case. PW7 in her evidence stated that as per radiological examination the age of the victim girl is above 17 years but below 20 years. It is settled law that medical evidence regarding age may be very 2 years on either side. It is also settled principle of law that if on the basis of evidence two view can be taken then the view which goes in favour of the accused shall be taken into consideration. Here in this case, the radiological examination of the victim shown that the age of victim girl was above 17 years and below 20 years at the time of occurrence. If from the lower side we added two years then the age of the victim girl would be 19 years. The victim girl also in her evidence stated that at the time of occurrence her age was above 18 years. So, there is no doubt that at the time of occurrence the age of the victim girl was above 18 years and she was not child as define u/s 2(d) of the POCSO Act.
- 10. Next we should see whether the accused person kidnapped the victim "X" or not. None of the witnesses except PW4 had seen the occurrence. So, PW4 is vital witness of this case. PW4 in her evidence stated that she had love affair with the accused at the time of occurrence and on the day of occurrence she went to the house of her friend for rooming and did not return. As she did not reported the said fact in her house and her family members on suspect and lodge the FIR against the accused person. During cross-examination, she stated that on the instruction of police he gave statement before the Magistrate. She in her cross-examination stated that accused had not taken her and accused has not established any physical relationship with her. PW4 is major one so, POCSO Act is not applicable in this case and the presumption u/s 29 of the POCSO is also not applicable in this case. From the evidence of PW4, it is crystal clear that accused had not kidnapped her and accused had not established any physical relationship with her. So, her evidence completely negated the prosecution case. Though, the PW4 had not supported the prosecution case but the prosecution side had not declared her as hostile

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evidence. Even, if the prosecution declare her as hostile witness then also prosecution would not benefited as because prosecution also failed to prove that at the time of accurrence the age of the victim girl was below 18 years. Therefore, I have nothing to hesitate to hold that the prosecution failed to bring home the charges against the accused person beyond all reasonable doubt.

- 11. From the discussion made above, I find that the prosecution side failed to prove the charges against the accused person beyond all reasonable doubt. Hence, accused Ejadul Ali @ Ejadul Islam is found not guilty u/s 366/376 of the IPC R/W Sec. 4 of the POCSO Act and he is acquitted from the charges and set him free at his liberty forthwith.
- 12. Send a copy of the judgment and order to the District Magistrate, Chirang as per provision of section 365 of the Cr. P. C.
- 13. Considering the fact and circumstance of the case, I find that this is not a fit case to recommend the DLSA, Chirang for victim compensation u/s 357-A Cr. P. C.
- 14. Bail bond furnished by the accused person shall remain in force till next six months from today as per provision of section 437-A of the Cr. P. C.

Given under my hand & seal of this court the 10th day of October, 2019.

Additional Special Judge,

Bijni.

Type by myself.

Additional Special Judge,

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APPENDIX

(A) Prosecution witnesses:

PW1- Abed Ali

PW2- Saki Alam

PW3- Laili Bibi

PW4- Victim (X)...

PW5- Aminur Islam

PW6- Abdul Salam

PW7- Dr. Mina Hazarika

(B) Prosecution exhibit-

Ext.1- statement of victim girl u/s 164 of the Cr. P. C. #

Ext.2- Medical Report.

- (C) Defence witnesses- Nil.
- (D) Defence exhibit- Nil.

Additional Special Judge,

Bijni.