IN THE COURT OF SPECIAL JUDGE, BARPETA

Special POCSO Case No. 50/2018 U/S 366(A) IPC R/W section 4 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge,

Barpeta.

Charge framed on:- 04.01.2019

State of Assam

- Vs -

Nasir Uddin.....Accused.

Date of Recording Evidence on – 16.05.2019

Date of Hearing Argument on – 16.05.2019

Date of Delivering the Judgment on – 16.05.2019

Appearance:

Advocate for the State------Mrs. P. Das. Ld. Addl. P.P.

Advocate for the Accused------Mr. Ayen Uddin Ahmed, Ld. Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that on 21.04.2018, one Golbar Hussain lodged an FIR in the Barbhita police out post alleging inter-alia that on 19.04.2018 at about 10 pm when the informant was absent in his home, accused No.1 named in the FIR entered his house with the ill advice of accused number 2 and 3 named in the FIR and kidnapped his minor daughter namely
 (X) aged about 14 years and kept her confined in an unknown place. Hence the case.
- 2. Following the information, police entered the same in the general diary vide GDE No.354 dated 21.04.2018 and forwarded the same to Kalgachia police station for registering a case which registered a case being Kalgachia P.S. case No.293/18 dated 22.04.2018 u/s 109/448/366-A/34

IPC.

- 3. During investigation, police visited the place of occurrence, recorded the statement of the witnesses including the informant as well as the victim girl u/s 161 Cr.P.C., collected medical report of the victim girl. On conclusion of investigation police finally laid the charge sheet against accused Nasir Uddin u/s 366-A IPC R/W section 4 of POSCO Act, with a view to stand trial. On the other hand, the other accused persons named in the FIR was discharged in the said offences because there were no material found against them. In the mean time, accused obtained bail vide order dated 31.05.2018.
- 4. On receipt of the case record, this court vide order dated 04.01.2019 after hearing the learned counsels appearing for both sides and perusing the materials on record having found a primafacie case charges u/s 366-A IPC and section 4 of POCSO Act are frame. The particulars of the offences on being read over and explained accused person pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution in order to substantiate its case examined only 2 witnesses namely- the informant as well as the alleged victim girl as PW-1 and PW-2 respectively. However, considering the quality of their evidence giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is 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 19.04.2018 at 10 pm accused Nasir Uddin induced the victim girl aged about 14 years the minor daughter of the informant to go from her house to another place knowing it to be likely that she will be forced or seduced to illicit intercourse as alleged?
- Whether on the same day accused caused penetrative sexual assault on the victim girl (X) as alleged?

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

I have heard the learned lawyers appearing for both sides and also gone through the evidence on record carefully.

- 9. The learned counsel Smti. Priti Das appearing for the State contended that given the nature of evidence adduced by PW-1 and PW-2 it would be difficult to convict the accused merely on suspicion.
- 10. On the other hand, the learned counsel for the accused vehemently contended that this is a fit case where accused is entitled to acquittal as there was no such credible evidence against his alleged conduct. Therefore, the learned counsel contends that it is a fit case wherein the benefit of doubt can well be extended.
- 11. Having heard the learned counsels appearing for both sides and on careful perusal of the evidence on record particularly the evidence of PW-1 Golbar Hussain who deposed that at the time of incident he was at Borgang in district of Biswanath. Then he received a phone call from his wife that their minor girl was missing from house. Having got this information from his wife, he immediately rushed to his residence and filed the FIR. Ext.1 is the FIR and Ext.1(1) is the signature of informant. In his cross examination he deposed that he do not know who had kidnapped his daughter.
- 12. PW-2 who is the alleged victim girl also deposed that on the day of incident she came out of her residence at night then someone came and pulled her up to somewhere else. But she could not identify the person. Thereafter, 2/3 unknown person took her to the police station from where her father took her to her house. Police also sent her to the court for recording her statement before Magistrate u/s 164 Cr.P.C. Ext.2 is the statement recorded before Magistrate u/s 164 Cr.P.C. and Ext.2(1) is the signature of the alleged victim girl. In her cross examination she deposed that whatever she stated before Magistrate was tutored by police.
- 13. On careful perusal of the evidence of PW-1 and PW-2 who are the star witnesses of the prosecution the offence u/s 366-A IPC and section 4 of POSCO Act, 2012 are not established. It is seen that there is no whisper in the evidence of PW-1, the informant or PW-2 the alleged victim, regarding any element of the offence u/s 366-A IPC. There is also no allegation that the girl was

subjected to any penetrative sexual assault by accused person or did any such things which makes

the girl to do so with him or any other person. Though the offence u/s 4 of POCSO Act is a serious

offence prescribing sentence of imprisonment of either description for a term which shall not be less

then 7 years but which may extent to imprisonment for life and shall also be liable to fine. But in the

instant case, prosecution miserably failed to establish the ingredients of offence u/s 4 of POSCO

Act for sustaining conviction of the accused person. Like wise, the element of offence u/s 366-A

IPC is also conspicuously absent in the instant case.

14. It is to be noted that given the quality of evidence of the alleged victim girl as well as the

informant proceeding further with the case to examine the remaining prosecution witnesses would

be a futile exercise at the cost of valuable time and energy of the court because the evidence of

PW-1 and PW-2 are grossly inadequate to hold the accused person guilty for the offences charged.

15. Therefore, this court do not consider it fit to examine the remaining prosecution witnesses.

The above being the position, this court has no option but to acquit accused Nasir Uddin from the

alleged offences u/s 366-A IPC R/W section 4 of POSCO Act, 2012 on the ground of benefit of

doubt and set him 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 sent to the learned District Magistrate, Barpeta for his

information 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 16th day of May 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	2	nos.	of witne	sses	:-
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PW-1 = is Golbar Hussain, the informant.

PW-2 = is victim (X).

2. The prosecution has exhibited following document :-

Ext.1 = is the FIR.

Ext.1(1) is the signature of informant.

Ext.2= is the statement recorded before Magistrate u/s 164 Cr.P.C. of victim girl.

Ext.2(1)= is the signature of the victim girl.

Sd/-

(Sri C. B. Gogoi) Special Judge, Barpeta.