

DISTRICT- BAKSA IN THE COURT OF SPECIAL JUDGE, BAKSA, MUSHALPUR

SPECIAL POCSO CASE NO. 29/19

(u/s 366 IPC r/w section 4 of POCSO Act2012)

State of Assam

-versus-

Santa Darji Accused

Present- Smti. M.C. Bordoloi, M.A., L.L.B., (A.J.S.), Special Judge, Baksa

Appearance:

Mr. Ranjit Chetri.....Public Prosecutor for the State Tridib Sarma.....Advocate for the accused person

Date of charge:

04-07-19

Date of Evidence:

01-08-19, 19-09-19, 15-02-2020

Statement recorded on: 27-02-2020

Date of Argument:

27-02-2020

Date of judgment:

28-02-2020

JUDGMENT

One Anowar Hussain, ASI at Barbari Police station lodged an ejahar with the said Police station on 26-05-19 alleging interalia that accused Santa Darji on the 25th day of May 2019 at about 8 pm enticed and kidnapped a minor girl and that the duo after being recovered by the police at Nikashi, were handed over to Barbari Police station and thereafter the instant ejahar was lodged.



Spl. POCSO Case No. 29/19

Upon receipt of the ejahar a case vide BBR P.S. Case No. 44/19 u/s 366 IPC was registered and investigated upon.

Upon completion of investigation, charge sheet u/s 366 IPC r/w section 4 of POCSO Act against accused Santa Darji was laid before the Ld. Chief Judicial Magistrate, Baksa who having taken cognizance of the offence issued summons to the accused to secure his attendance in Court and on appearance of the accused serviced copies of the case to the accused in compliance of the provisions of section 207 CrPC and thereafter vide order dated 20-06-19 committed the case record to the Court of Hon'ble Sessions Judge, Baksa, Mushalpur with due notice to the Id. Public prosecutor, Baksa(P.P. for short hereinafter).

(The requirement of committal of the case though not required under law for the cases under POCSO Act, yet the Ld. CJM, Baksa had resorted to the exercise).

On receipt of the case record on committal, Hon'ble Sessions Judge, Baksa registered the same as the instant Special Case and on production of the accused from judicial custody, having found primafacie materials u/s 366 A IPC and section 4 of the POCSO Act, framed charge u/s 366 A IPC r/w section 4 of the POCSO Act against accused Santa Darji vide order dated 04-07-19. The charge so framed, on being read over and explained to the accused, he pleaded not guilty and claimed trial. Thereafter the accused was enlarged on bail and faced trial during his enlargement.

Prosecution in order to prove its case examined as many as 3 witnesses and 1 Court witness.

Defence side cross examined all the Pws and also the Court witness.

The statement of the accused u/s 313 CrPC was recorded and kept in the C/R. Accused in his statement averred that the victim girl was his friend and that she was crying on the fateful day and had asked for shelter which he provided at his sister's place. Accused stated that he resides at Goalpara and had come to his sister's place on the fateful day for a visit and the victim girl being his friend as well

Special Judge Baksa. Nustrator





as his sister's neighbour he offered to help her when she asked for the same, consequent to her discord with her mother. The accused also stated that rumour was aloft, in the meanwhile that he had kidnapped the victim girl, for which he himself went to the police station for his security. Accused pleaded complete innocence.

The defence plea is that of total denial of guilt.

ARGUMENTS

Heard the arguments advanced by the learned counsels of both sides.

Learned P.P. Baksa submits that Court shall pass Judgment/orders as deem fit after perusal of the case record in its entirety.

Learned defence counsel submits that accused is innocent and the victim girl on her own accord had taken refuge at the accused's sister's house after some dispute with her mother and the accused had been entangled in the case for no fault of his. Ld. Counsel prays for acquittal of the accused.

Perused the case record.

The point for determination that has surfaced in the instant case is as follows:

Point for determination:

- 1. Whether on the 25th day of May, 2019 at about 8 p.m. the accused induced the victim girl under the age of 18 years to go from her home with the intent that she may be forced or seduced to illicit intercourse with another person and thereby committed offence punishable under section 366-A IPC.?
- 2. Whether the accused on 25-05-19 committed penetrative sexual assault on the victim girl?

My decision on the above points for determination along with reasons is given hereinunder.

Discussion, Decision and reasons there for:

To address the points for determination so framed, it will be necessary to peruse the evidence on record and I proceed to do so.

Eskea Judge



PW-1 the informant of the instant case deposed that he was posted at Barbari P.S. at the relevant time and that on 25-05-19 the accused kidnapped the victim girl from her house and the police apprehended them at Nikashi and handed them over to Barbari P.S. and since the parents of the victim girl did not lodge any FIR, he submitted the same which was, received and registered at the police station vide Barbari P.S. Case No. 44/19 u/s 366 IPC.

PW1 identified the ejahar lodged by him as Ext. 1 and his signature thereon as Ext. 1(1).

When put to cross examination PW1 disclosed that he do not have the first hand knowledge of the occurrence and he learnt about the occurrence from the then O/C of the Barbari P.S..

PW2-Dipali Kalita the mother of the victim deposed that accused at the relevant time had come for a visit to the house of her neighbour who was the accused's brother-in-law and that on the fateful day the victim girl was talking with the accused and did not respond to her calls to return home, consequent to which she slapped her victim daughter whereupon her daughter became adamant and refused to return home and took shelter in the house of her relative. PW2 further stated that in the mean time rumour made rounds that the victim girl had eloped with the accused, fearing consequences, the duo surrendered before the Nikashi Police, who handed them over to Barbari Police Station and therefrom she took custody of her victim child. PW2 stated that the police caused her victim child's medical examination and the recording of her statement in court. She deposed that the victim girl was 14 years of age at the time of occurrence.

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In her cross examination she clarified that the ejahar contained false allegations against the accused person.

CW1 the victim(name withheld) deposed that he had known the accused much prior to the occurrence as the accused used to visit her neighbour who was the accused's relatives and that on the fateful day at about 4 pm she was talking to the accused on the road and that her brother reckoned her to return home but she did not pay heed,



whereupon her mother came and gave her slaps. CW1 went on to state that out of fear, she did not return home and instead took shelter in the house of her relative and on the next day she went with the accused to Nikashi police out post and therefrom she was brought to the Barbari Police Station. CW1 stated further that police caused her medical examination and also caused her statement to be recorded in Court. CW1 identified her medical examination report as Ext. 2 and her signature thereon as Ext. 2(1) and her statement recorded in Court as Ext. 3 and her signatures thereon as Ext. 3(1) and Ext. 3(2).

In her cross examination she clarified that she had the apprehension that the local public would assault her for which she went to the house of the accused's relative.

PW3-Nilovjyoti Nath is the Investigating Officer of the instant case. He deposed that on being endorsed, he investigated the case and during investigation he visited the place of occurrence, traced the sketch map of the place of occurrence caused the victim's medical examination and caused her statement to be recorded in Court, collected the medical examination report of the victim, arrested the victim etc. PW3 submitted charge sheet against the accused u/s 366 IPC r/w section 4 of the POCSO Act. PW3 identified the sketch map of the place of occurrence as Ext. 3(A) the charge sheet as Ext. 4 and his signatures on the aforesaid exhibits as Ext. 3(A)(1) and Ext. 4(1) respectively. PW3 also identified the victim's Xray report collected by him as Ext. 5.

Baksa Mushalou

During cross examination he denied the defence suggestion that he submitted the charge sheet against the accused without any basis.

This is the evidence available on record.

None of the prosecution witness supported the prosecution version. The victim and her mother negated the alleged occurrence in its entirety. Both the victim(CW1) and her mother(PW2) deposed in respect of a mother-daughter discord consequent to which the victim took shelter in a different house. It is not forthcoming in the evidence that the accused induced or entired the victim girl to accompany him



or to abandon the lawful guardianship of her parents. It is also not forthcoming, in the evidence, that the accused had solicited to marry the victim girl. The charge u/s 366-A IPC against the accused fails thus.

Again the evidence on record do not disclose that the accused had made any sexual assault or sexual intercourse with the victim girl. The ingredients of section 4 of the POCSO Act do not find attraction herein.

Prosecution has failed to bring home the charge u/s 366-A IPC r/w section 4 of the POCSO Act against the accused person beyond all reasonable doubt.

The points for determination stands answered in the negative accordingly.

In the facts and circumstances of the case, no compensation is awarded to the victim girl.

Order

In the light of the above discussions, accused Santa Darji is acquitted of the charges u/s 366-A IPC R/W Section 4 of the POCSO Act and set at liberty forthwith.

The bail bond of the accused person shall remain in force for a period of 6 months with effect from today in view of the provisions of Section 437-A Cr.PC.

Given under my hand and seal of this court on the 28th day of February, 2020.

(Smti. M.C. Bordolo special Judge

Baksa, Mushalpur

Special Judge, Baksa, Mushalpur

Dictated and corrected by me

(Smti. M.C. Bordoloi) Special Judge Special Judge, Baksa, Raksa Mushalpur





APPENDIX

Prosecution witness:

PW1 Anowar Hussain

PW2 Dipali Kalita

PW3 Nilovjyoti Nath

Prosecution Exhibits:

Ext.1 FIR.

Ext.1(1) Signature of Anowar Hussain

Ext.2 Medical report of the victim

Ext.2(1) Signature of victim

Ext.3 Statement of the victim u/s 164 CrPC

Ext.3(1) and Ext. 3(2) Signatures of victim

Ext. 3(A) Sketch map of the P.O.

Ext.3(A)(1) Signature of Nilovjyoti Nath

Ext.4 Charge Sheet

Ext.4(1) Signature of Nilovjyoti Nath

Ext.5 X-ray report of the victim

Defence witness: Nil.

Material exhibits: Nil

Court witness:

CW1 victim(name withheld)

(Smti. M.C. Bordol**Spēciai Judgē Baksa, Mushaipu** Special Judge, Baksa, Mushaipur