IN THE COURT OF THE SPECIAL JUDGE :::::: HAILAKANDI

Special (POCSO) (T 1) Case No. 10/2017

U/S - 376 of the IPC read with Sec. 4 of the POCSO Act.

State

- Versus -

Tinkon Roy

.....Accused.

PRESENT :-Shri D. Bhattacharjee, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person :- Sri A.H. Laskar, Ld. Advocate.

Dates of recording evidence :- 25.10.2017 & 30.01.2018.

Date of recording statement u/s 313, CrPC :- 07.02.2018.

Date of Argument

:- 07.02.2018.

Date of Judgment

:- 07.02.2018.

JUDGMENT

The prosecution case, in brief, is that on 29.05.2017 the complainant Monindra Roy lodged a complaint with the Ld. CJM., Hailakandi alleging that on 10.5.2017 saw the symptom of pregnancy in the person of his daughter, the victim and on being asked, the victim stated that the accused Tinkon Roy giving assurance to marry her has been maintaining physical

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relationship with her and to that effect, bichar was held at the intervention of the village elderly persons but the accused did not agree to marry the victim. Subsequently, finding no other alternative, the complainant approached to the Court of law.

- 2. On receipt of the complaint, the same was sent to the O/C, Katlicherra Police Station, wherein a case vide Katlicherra Police Station Case No. 76/2017 was registered under Sec. 376 of the IPC read with Sec. 4 of the POCSO Act and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, drew up rough sketch map of the place of occurrence, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Tinkon Roy under Sec. 376 of IPC read with Sec. 4 of the POCSO Act.
- 4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Tinkon Roy under Sec. 376 of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

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- 6. In the instant case, the prosecution has examined 3 Nos. of Pws including the victim and the informant othe case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- 7. Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION:

(i) Whether the accused Tinkon Roy before 10.05.2017 committed penetrative sexual assault on the victim causing pregnancy to her, as alleged?

(ii) Whether the accused Tinkon Roy during the aforesaid period committed rape on the victim, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF:-

8. The victim, PW. 1, has deposed that the incident took place around 6 months back. From the last Bengali Calendar month "Agrahayan", the accused was offering her to marry him and out of belief, he committed sexual intercourse with the victim. The PW. 1 has also deposed that the accused maintained physical relation with her for 7 months but subsequently the accused refused to marry her and while she understood that she became pregnant, the victim disclosed the same fact to her parents and thereafter, her father lodged the case. During investigation, police got her medically examined and she also made statement before Magistrate. The victim has

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exhibited her statement which was recorded by the Magistrate under Sec. 164, CrPC under Ext. 1 and her signatures therein under Exts. 1(1) and 1(2).

During cross examination, the victim has deposed that her house and the house of accused person are at opposite direction to each other and the accused is a married person having 2 children. It is also deposed by the victim that she is unable to recall her date of birth and out of imagination, she stated her age as 17 years in the evidence. Her age was perhaps more than 18 years and she has goto no allegation against the accused as she allowed the accused for sexual intercourse on her own consent. At present, her marriage is settled and on the next Saturday, Mangal Acharan will be held.

9. The complainant Monindra Roy (PW.2), the father of the victim has deposed that the accused Tinkon Roy is his neighbour. About 7/8 months back one day, he came to know that her daughter, the victim was pregnant and on being asked, his wife reported him that there was love affair between their daughter and the accused and out of that, they developed physical relationship. This witness has also deposed that after lodging the case, the dispute was settled and as per instruction of the village people, the accused person paid an amount of Rs. 50,000/- to him as compensation and with the said amount, he has arranged the marriage of the victim and he does not want to proceed with the case as it will hamper the future of his daughter. On the next Saturday, the Mangal Acharan of the victim will be held.

During cross examination, the PW. 2 has deposed that at the time of incident, his daughter, the victim was aged more than 18 years.

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- The PW. 3, Smti. Mira Roy, mother of the victim, has deposed that about 8/ 9 years back one day at about 12 Noon, she was not present in the house and when she returned to her house, her daughter, the victim reported her that the accused had developed physical relation with her with the promise of marriage and the victim became pregnant. Then, they informed the matter to the village people, who settled the matter amicably. As per instruction of the village people, the accused persons has paid an amount of Rs. 50,000/- to the victim towards compensation and with the said amount of money, the marriage of the victim will be performed and on the next Saturday, the Mangal Acharan will be held.
- 11. During cross examination, the PW. 3 has stated that her marriage was held about 27/28 years back and after 5 years of her marriage, the victim was born.
- 12. At the very out set, let me decide the age of the victim during the period of alleged sexual intercourse i.e. prior to 10.05.2017, on her by the accused.

Though the Medical Officer, who examined the victim during investigation by the police, has not been examined to prove the Medical Report of the victim but the same is available in the record. On perusal of the Medical Report, it appears that Dr. R. Begum, SDM. & HO., Civil Hospital, Hailakandi examined the victim on 8.6.2017 at 1 PM but could not determine the age of the victim due to non-availability of x-ray report. However, the victim has deposed before this Court that out of imagination she stated her as 17 years in her evidence in chief but her age was perhaps more than 18 years. The complainant, who is the father of the victim, has clearly

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stated that at the time of incident, his daughter (the victim) was aged more than 18 years. So also the mother of the victim (the PW. 3) has clearly deposed before this Court on 30.01.2018 stating that her marriage was held about 27/ 28 years back and after 5 years of her marriage, the victim was born. In absence of medical evidence in respect of the age of the victim, keeping in view the evidence of the parents of the victim i.e. Pws. 2 and 3 and the evidence of victim herself, the PW. 1, it is held that the victim was major at the time of alleged sexual intercourse upon the victim by the accused person.

13. Now, let me scrutinize the evidence of prosecution witnesses to see as to what extent they have implicated the accused person in the commission of the alleged crime.

The informant (PW. 2), the father of the victim in his evidence has vividly divulged that out of love, the accused and the victim had developed physical relation between them and at the intervention of the village elderly persons, the matter has been settled and the accused paid an amount of Rs. 50,000/-to him towards compensation and with the said amount, the marriage of the victim has been arranged. The victim, PW. 1, though in her evidence in chief has implicated the accused person to some extent but in her cross examination, corroborating her father she has also stated that she allowed the accused for sexual intercourse on her own consent and presently, her marriage is settled and on the next Saturday, her Mangal Acharan will be held and she has got no objection, if the accused person is acquitted. The PW. 3, mother of the victim has also disclosed in her evidence the same facts as stated by Pws. 1

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and 2, complainant and the victim respectively to the effect that there was love affair between her daughter and the accused and out of that, they had developed physical relation and after filing the case, the matter was amicably settled and as per instruction of village people, the accused person paid an amount of Rs. 50,000/- to the victim as compensation and with the said amount, the marriage of the victim has been arranged.

- 14. Under the above circumstances, it can be safely held that the victim was a consenting party and on her own volition, she allowed the accused in the commission of the sexual intercourse. That apart, when the victim being consenting party was major at the time of the sexual intercourse and as such, I do not find any cogent reason to hold the accused person guilty. Hence, according to me, it would be appropriate to acquit the accused person Tinkon Roy, who has been charged under Sec. 376 of the IPC read with Sec. 4 of the POCSO Act.
- 15. It is worthwhile to mention here that though from the evidence on record, it has come out to some extent that the accused made false promise to marry the victim but the accused has already compensated the victim for the misdeed he committed by means of payment of an amount of Rs. 50,000/- to the victim and with the said amount, the marriage of the victim has been arranged.
- 16. In fine, the accused person Tinkon Roy is acquitted of the charge levelled against him and he is set at liberty forthwith.
- 17. The bail bond of the accused person stands discharged.

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- 18. Send a copy of this judgment to the District Magistrate, Hailakandi.
- 19. The Special (POCSO) case is disposed of accordingly.
- Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 7th day of February, 2018.

Special Judge, Hailakandi.

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Dictated and corrected by me :-

Special Judge, Hailakandi.

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<u>Dictation is taken and transcribed by Baharul Islam Choudhury,</u>

<u>Stenographer Grade I.</u>

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Appendix :-

Oral evidences :-

PW. 1, the victim.

PW. 2, Monindra Roy.

PW. 3, Mira Roy.

Documentary evidences:-

Ext. 1- Statement of the victim.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

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