IN THE COURT OF THE SPECIAL JUDGE :: :: :: TINSUKIA

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 16 (T) of 2018

U/s 8 of POCSO Act & u/s 370 of I.P.C.

The State of Assam	Complainant.
-Versus -	
Sri Ashraful Haque,	
S/o- Sri Saharab Ali	
R/o- Tistapar Gaon	
P.S- Dhubri	
District- Dhubri, Assam	Accused.
Appearance:	
Sri B.L Agarwal,	
Spl. Public ProsecutorFor the State	

Naresh Prasad,

Advocate For the accused.

Date of Argument: 04/09/2019

Date of Judgment: 04/09/2019

J U D G M E N T

PROSECUTION CASE

- 1. On 16/04/2018, at about 7 pm, the daughter of the informant disappeared from his house. She was born on 23/01/2001. The father searched for his daughter, but could not find her. Next morning, he went to the Talap Outpost and informed police about the disappearance of his daughter.
- 2. On that day, at about 7 /8 am, Pankaj Changmai, who is a relative of the informant father got an information that a boy and a girl were taking shelter in a house at Bokapathar gaon. The information was immediately transmitted by Pankaj Changmai to the father of the victim girl. After that, the father of the victim girl along with police went to Bokapathar village and on reaching there, they could come to know that the couple had already left that area. From the owner of the house at Bokapathar, the father of the victim came to know that a boy and a girl had stayed at the night in his house.
- 3. On that day, at about 2 pm the Officer-in-Charge of Duliajan P.S called the father of the victim girl and told him

that his daughter was detained in the said police station. Thereafter, Doomdooma Police Station brought the victim girl from Duliajan.

- 4. The victim girl was subjected to medical examination. On that day, she was menstruating, so Doctor could not examine her private parts. The victim told Doctor that on 16/04/2018, at about 7.30 pm somebody forcibly took her in a van and kept her for the night at Bokapathar and on the next day, she was taken to Duliajan. The victim also told before the Doctor that a person called Ashraful Haque had committed rape upon her, while she was kept at Bokapathar gaon.
- 5. The victim was also sent to a court for recording her statement u/s 164 Cr.PC. She claimed before the Magistrate that she was 17 years old. She further stated that the accused Ashraful Haque had called her over phone and told her that he would be taking her away. The accused also told the victim that she should bring gold ornaments with her, while she would be coming with him. The victim girl told before the Magistrate that as per the instruction of the accused Ashraful Hague, she took an amount of Rs. 12,000/- in cash and also took with her gold ornaments and came out of the house in order to meet the accused. According to the victim, when she came out of her house, she found that a Maruti van was waiting for her on the road, but the occupants of the vehicle were unknown to her. The victim also stated before the Magistrate that she fell in love with Ashraful Haque, by seeing his picture in Facebook and WhatsApp. The victim told Magistrate that she did not see that person, whose photograph she had seen in Facebook and Whatsapp. The victim claimed before the Magistrate that Ashraful Hague had

cheated her by uploading someone else photograph in his profile and lured her to love him. The victim has stated before the Magistrate that Ashraful Haque took her to Bokapathar and kept her in the house of an unknown person, where Ashraful Haque wanted to commit rape upon her. The victim stated before the Magistrate that next morning, she was taken to Duliajan in a Bolero vehicle and on reaching Duliajan, Ashraful Haque had hired another car for going to Jorhat. The victim has stated before the Magistrate that the driver of the said vehicle suspected that something wrong was going on and therefore, he took the vehicle to Duliajan P.S. and in that way the victim came to the custody of Duliajan P.S.

6. On conclusion of investigation, police filed the charge sheet against the accused Ashraful Haque u/s 366 (A) of I.P.C. and u/s 8 of the POCSO Act. On his appearance before this court, the charges u/s 8 of the POCSO Act and u/s 370 of the Indian Penal Code was framed against the accused.

POINTS FOR DETERMINATION

- 7. The points for determination in this trial, are as to:-
- I. Whether on 16/04/2018, at Bokapathar Gaon, the accused Ashraful Haque had committed rape upon the victim girl, who was below 18 years of age? and
- II. Whether on 16/04/2018, at Bokapathar Gaon, the accused Ashraful Haque for the purpose of exploitation transfered the victim girl by using force?

DECISION AND REASONS THEREOF

8. In order to prove the case against the accused person, the prosecution side has examined as many as eight

witnesses. The defence plea is total denial. I have carefully gone through the prosecution evidences.

9. Here in this case, the victim girl is the only eye witness to the occurrence, therefore I shall first take up her evidence. The victim girl has stated in her evidence that at the time of occurrence, she was in love with a person named Mujamil Sarkar, whom she knew as Raju Roy. She has stated in her evidence that on 16/04/2018, at about 7 pm, the aforesaid Raju Roy @ Mujamil Sarkar called her over phone and asked her to elope with him immediately. The victim girl stated that in response to the call of Raju Roy, she went out of the house. The victim claimed that she took with her gold ornaments like finger rings, bangles, chain, ear rings etc. and also took an amount of Rs. 12.000/- in cash. The victim has stated that she was promised by Raju Roy that he would be waiting infront of her house in a van. The victim has stated that when she had reached the said van, its occupants were unknown to her. She asked those unknown persons about the whereabouts of Raju Roy. The victim girl has stated that those unknown persons told her that Raju Roy was there, but she could not see him. According to the victim girl, the unknown occupants of the vehicle forcibly pulled her inside the vehicle and put one black cloth on her face and took her to Bokapathar village. Those unknown persons had told her that Raju Roy was waiting for her in a house at Bokapathar. The victim girl has stated that she was taken to a house at Bokapathar, but she could not find Raju Roy there. The victim disclosed that the accused Ashraful Hague was with her, but at that time she did not know his name. The victim has stated that she slept with the accused Ashraful Haque that night and had physical relationship. She has stated that on the next morning, she was taken to Duliajan and she was told by the present accused that he would be taking her to his house. The victim girl has stated that on reaching Duliajan, they hired one vehicle in order to go to Jorhat, but the vehicle driver brought her and the accused to Duliajan P.S. and handed them over to police. The victim has proved her statement recorded u/s 164 Cr.PC, as Ext. 2.

- 10. Now, I shall take up the evidence of the Police Investigating Officer. He has stated in his evidence that the victim girl was maintaining friendship with the accused Ashraful Haque in Facebook for a period of about 6 months. He also came to know that the victim had collected the phone number of the accused from a person named Raju Sarkar. The I.O has stated that the victim was regularly chatting with the accused Ashraful Haque in Whatsapp. The I.O has further came to know that in the Facebook account, the accused Ashraful Haque did not post his photograph; rather he had posted somebody else's photograph and therefore, the victim never saw the accused Ashraful Haque prior to the occurrence.
- 11. The other witnesses in this case are the informant, the father of the victim girl, Ankur Deb, Chinmoy Baruah, Chidananda Baruah, Bubul Munda and the Doctor, who had examined the victim girl during the period of investigation.
- 12. The father of the victim girl has stated in his evidence that his daughter told him that she was in love with a person named Raju Roy @ Mujamil Sarkar and on the day of occurrence, though she went out of the house, after being called by the said Raju Roy, but she could not meet him; rather she met some unknown persons, who took her away in

a vehicle. The father of the victim girl has quoted his daughter as saying to him that after she was forcibly put in the vehicle, she had lost her consciousness.

- 13. The witness Ankur Deb has stated that one day he was traveling in a Bolero vehicle and was coming from Bokapathar to Tinsukia. He noticed that one boy and a girl were also sitting inside the vehicle. Ankur Deb has stated that within a very short time, he came to know that the girl was from Bokapathar village and the boy was a Muslim and he came to know that both had eloped together. Ankur Deb has stated that when the vehicle reached Doomdooma, he got down from the said vehicle and borrowed one motor cycle from a friend of his and went to house of the parents of the victim and informed them that their daughter had eloped with a boy.
- 14. The witness Chinmoy Baruah is a relative of the victim girl. His evidence is hearsay. When the victim girl was recovered by police, he went to Duliajan P.S. and brought her home.
- 15. The witness Chidananda Baruah is also a relative of the victim. He has stated in his evidence that one day the victim disappeared from her house and after two days, she returned home. The witness has stated that he did not ask any question to the victim.
- 16. The witness Bubul Munda has stated in his evidence that one day he saw that a Bolero vehicle was parked infront of the house of his neighbour Amit Munda. He has stated that the victim and the accused had boarded the said vehicle and after that he and the witness Ankur Deb also boarded that vehicle in order to go to Tinsukia.

- 17. All the prosecution witnesses have been extensively cross examined by the defence counsel.
- 18. During cross examination, the victim has admitted that she knew the accused Ashraful Haque for a long time, as he was working as a contractor at Dholla. She has also stated before the defence counsel that when she reached Bokapathar with the accused, she had food in the house, where she was kept by the accused. She also admitted that when she and the accused were traveling from Bokapathar to Duliajan, two other persons also traveled in the same vehicle and they got down at Doomdooma.
- 19. On scrupulous perusal of the evidence of the victim girl, I find that she never stated in her evidence that the accused had forcible sexual intercourse with her. The victim has stated before the Magistrate that while she was kept at Bokapathar gaon, the accused attempted to commit rape upon her. Therefore, I have before me two views. In one view, the victim stated that the accused attempted to commit rape upon upon her; whereas on the other view, the victim stated that she had physical relationship with the accused.
- 20. Apart from the aforesaid facts, on closed scrutiny of the evidence of the victim girl, I find that the evidence of the victim girl to the effect that she was raped by the accused and transfered for the purpose of exploitation, remained not proved beyond all reasonable doubts against the accused. I have no doubt that the victim girl was a consenting party to the act of the accused.
- 21. According to the birth certificate of the victim girl, she was born on 23/01/2001 and the birth certificate was issued

on 20/10/2016. Therefore, there is a doubt about the actual age of the victim girl. The birth certificate must have been procured for some other purposes. Under the aforesaid circumstances, I find myself foreclosed against all options, but to hold that the offences u/s 8 of the POCSO Act and u/s 370 of the Indian Penal Code are not proved against the accused Ashraful Haque beyond all reasonable doubts.

ORDER

22. That being the position, the accused Ashraful Haque is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 4th day of September, 2019.

(P.J. Saikia)

Special Judge

<u>Tinsukia</u>

Dictated & corrected by me.

Special Judge

<u>Tinsukia</u>

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Sri Phanindra Nath Baruah
- 2. PW2 Smti Jupitara Baruah
- 3. PW3 Dr. Ashma Zekia Hussain Ghaznavi
- 4. PW4 Sri Ankur Deb
- 5. PW5 Sri Chinmoy Baruah
- 6. PW6 Sri Chidananda Baruah
- 7. PW7 Sri Bubul Munda
- 8. PW8 Sri Thagish Doley, S.I.

PROSECUTION EXHIBITS

- 1. Ext.1- Ejahar
- 2. Ext. 2- Statement of victim u/s 164 Cr.PC
- 3. Ext. 3- Medical report
- 4. Ext. 4 Statement u/s 164 Cr.PC
- 5. Ext. 5 Seizure list
- 6. Ext. 6- Statement of Bubul Munda
- 7. Ext. 7 Sketch map
- 8. Ext. 8 Seizure list
- 9. Ext. 9 Charge sheet
- 10. M. Ext. 1- Birth certificate

DEFENCE WITNESS

None.

Special Judge

Tinsukia