JUDGE::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 42/2018 U/S 420/493/376/366 IPC R/W Section 9 of PCMA and Section 04 of POCSO Act

State of Assam -Vs-

Anil Minj.....Accused.

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.
For the Accused : Mr. Bhaskar Sarma, Learned Advocate.

Date of Evidence : 09-08-19: 02-01-20: 08-01-20.

Date of Argument : 10-01-2020.

Date of Judgment : 18-01-2020.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 12-01-2018, informant lodged an FIR with the Officer-in-Charge of Panery P.S. alleging that since 2002, the accused Anil Minj cohabitate with her with the assurance of solemnizing marriage with her. The accused took her to Gurgaon in Delhi but on 22-03-2016, he forcibly sent the informant back to his home. Thereafter, on 23-12-2017, the accused kidnapped her eighteen years old younger sister.

- 2. On the basis of the FIR, Paneri PS Case No. 04/18, under Section 493/420/376/366/506 IPC was registered. Later on, Section 4 of POCSO Act was added and after completion of investigation Police submitted charge-sheet under Section 420/493/376/366 IPC R/W Section 9 of Prohibition of Child Marriage Act and Section 4 of POCSO Act against the accused Anil Minj.
- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 420/493/376/366 IPC R/W Section 9 of PCMA and Section 4 of POCSO Act, learned Special Judge framed charge thereunder and the ingredients of charge under Section 420/493/376/366 IPC R/W Section 9 of PCMA and Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 09-08-2019, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 04(four) witnesses:

PW1- Dr. Kangkan Kr. Thakuria.

PW2- Victim-A.

PW3- Victim-B.

PW4- Dr. Chandan Saha.

- 5. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the point for determination in the instant case is set up as follows:-

- (I) Whether the accused cheated the informant by breaking the promise of marrying her?
- (II) Whether the accused by deceit caused the informant, not married to you, to believe that she was lawfully married to you and have sexual intercourse under such belief?
- (III) Whether the accused committed rape on informant?
- (IV) Whether the accused kidnapped the victim-B with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry you against her will or that she might be forced or seduced to illicit intercourse with him?
- (V) Whether the accused a male above eighteen years of age, contracts marriage with victim-B, a girl aged about 16 years?
- (VI) Whether the accused committed penetrative sexual assault upon the victim-B, aged 16 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. Bhaskar Sarma.
- 8. Learned defence counsel has argued that both the victim girls were major at the time of incident and PW3, one of the victims, had voluntarily gone with the accused. Therefore, the ingredients of Section 420/493/376/366 I.P.C., R/W Section 9 of PMCA and Section 4 of POCSO Act have not been established in the present case against the accused person.
- 9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is Dr. Kangkan Kr. Thakuria. In his evidence PW1 had deposed that on 07-05-2018 he was posted as M&HO-1 at Udalguri Civil Hospital. On

that day at 12:13 PM he examined victim-A vide reference Panery PS case No. 04/2018. The girl was escorted by WPC/442 Anju Moni Deka. On examination he found the following:-

Physical examination:-

Height- 171 cm, weight- 45 Kg, teeth- 32., axillary hair- present, pubic hair- present, breast- developed, hymen- absent, vaginal injury- absent, marks of violence- nil, clothing- pink salwar/ Kurta, pink pant and chunni.

Vaginal swab examination for spermatozoa:- Victim refuses vaginal swab examination

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- Approximately 22-25 years or above. Epiphyseal union completed in upper and lower end of radius and ulna, lower end of humerus and in iliac crest.

Urine for pregnancy (BHCG) test on 07-05-2018 shows negative.

PW1 had deposed that in his opinion:

- (1) Radiological age is between 22-25 years or above.
- (2) No signs of physical injury to private parts.
- (3) Victim refuses vaginal swab examination.

Ext. 1 is the medical examination report. Ext. 1(1) is the signature of PW1. Cross-examination of PW1 had been declined by the defence.

11. PW2 is victim-cum-informant of this case, elder sister of victim-B. In her evidence PW2 had deposed that about two years ago, the occurrence took place. The accused had love affairs with her younger sister victim-B. On the date of occurrence, the accused eloped with her sister. Then, out of anger she lodged FIR before the Police. Now both the accused and her sister have been living together as husband and wife and they have one female child. Now she did not want to proceed with the instant case as they have been living peacefully. She was acquainted with the accused since 2002 and they worked together in Delhi. She had good friendly relation with the accused. After filing the FIR, she was produced before the Magistrate by the Police to get her statement recorded U/S 164 Cr.P.C. She

was also examined by the doctor on being produced by the Police. Ext-2 is the FIR. Ext-2(1) is the signature of PW2. Ext-3 is my statement recorded U/S 164 Cr.P.C. Ext-3(1), 3(2), 3(3) & 3(4) are the signatures of PW2. In cross-examination, PW2 had stated that she had no allegation against the accused. Accused is her brother-in-law.

- 12. PW3 is Victim-B, younger sister of the informant. In her evidence PW3 had deposed that accused Anil Minj is her husband. She had love affairs with the accused. About two years ago, she eloped with the accused and got married with him. They had one girl child. As she eloped with the accused without informing her sister, therefore her elder sister lodged the FIR out of anger. In connection with this case, Police produced her before the Magistrate who recorded her statement U/S 164 Cr.P.C. The Police also produced her before the doctor for her medical examination. Ext-4 is the statement. Ext-4(1) & 4(2) are the signatures of PW3. In cross-examination, PW3 had stated that she voluntarily eloped with the accused. He did not use force to go with him. At the time of incident, she was aged about 23 years.
- 13. PW4 is Dr. Chandan Saha. In his evidence PW4 had deposed tat on 04-05-18, he was working as M.&H.O1 at Udalguri Civil Hospital. On that day, he examined victim-B vide reference to Paneri PS case No.04/18 U/S 493/420/376/366/506 IPC. The girl was escorted by WPC 442 Anjumoni. On examination, he found the following:-

Physical examination:-

Height- 170 cm, weight- 60 Kg, teeth- 32 Nos., auxillary hair- present, pubic hair- present, breast- developed, vaginal injury-none, marks of violence- none, Clothings- Churidar, LMP-02.09.18

Smear examination vide Red No. 6040/18 shows spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination shows radiological age 16-17 years.

Epiphyseal union of iliac crest completed, epiphyseal union over wrist and elbow joint completed.

Urine for pregnancy (BHCG) test not supplied.

Ultrasonography of Abdomen on 18.05.18 reveals single life fetus of 35W 6 days +- 1 week of gestation

PW4 had deposed that in his opinion:

- 1. No violence seen in private parts.
- 2. No spermatozoa seen in vaginal swab.
- 3. Radiological age is 16-17 years.
- 4. 35 weeks 6 days pregnant.

Ext.5 is the report and Ext.5 (1) is the signature of PW4.

In his cross-examination, PW4 had stated that in Ext-5, he did not mention the date of examination of the victim.

14. On appraisement of evidence on record it appears that the most material and vital witnesses, the informant-cum-victim-A (PW2) and victim-B, the younger sister of the informant(PW3) have not deposed anything implicating the accused. PW2, the informant has deposed contradicting the factum of the FIR. Her evidence is to the effect that she out of anger lodged an FIR before the police as the accused eloped with her sister (PW3). She had deposed that the accused had love affairs with her younger sister victim-B. The accused and victim-B have been living as husband and wife and they have a female child. PW2 was acquainted with the accused since 2002 as they have worked together in Delhi. PW2 had further deposed that she did not want to proceed with the instant case and had no allegation against the accused. Corroborating the evidence of PW2; PW3 the victim-B has deposed that she had love affairs with the accused, so eloped with him and got married with him. They had a girl child. She had further deposed that as she eloped with the accused without informing her sister, therefore, her sister(PW2) lodged the FIR out of anger. Now, regarding the age of both the victims, it appears that victim-A and victim-B in their statements recorded under Section 164 Cr.P.C. mentioned their age as 32 years and 24 years respectively and in their depositions recorded before the Court mentioned their age as 34 years and 25 years respectively. PW2 was examined by the doctor(PW1), wherein in the medical report it appears that radiological age of the victim-A was between 22-25 years and PW3 was examined by the doctor(PW4) wherein in the medical report it appears that radiological age was 16-17 years. Though the doctor has opined that the age of PW3 was found between sixteen to seventeen (16-17) years, but the opinion of doctor is not specific as to the age of the victim. In case of medical opinion with regard to age the margin of error is two (2) years on either side and in such case the benefit of margin of error always goes in favour of the accused. Moreover, right from the beginning i.e. from the stage of investigation of the case till the trial both the victims are consistent that they are major women. Thus evidence on record clearly shows that both the victims are major women and victim-B being a major woman is entitled to give valid consent for the marriage with the accused and as such accused has committed no offence for solemnizing marriage with victim-B.

- 15. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 420/493/376/366 IPC R/W Section 9 of Prohibition of Child Marriage Act and Section 4 of POCSO Act against the accused person beyond all reasonable doubt.
- 16. Situated thus the points for determination are decided in the negative and against the prosecution.

<u>ORDER</u>

17. In the result, the accused Anil Minj is found not guilty under Section 420/493/376/366 IPC R/W Section 9 of Prohibition of Child Marriage Act and Section 4 of POCSO Act and acquitted of charges under Sections 420/493/376/366 IPC R/W Section 9 of Prohibition of Child Marriage Act

and Section 4 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.

- 18. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.
- 19. Judgment is signed, delivered and pronounced in the open court today the 18th day of January, 2020.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

Special (POCSO) 42/2018 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : Medical report of PW2.

Ext.-2 : FIR.

Ext.-3 : Statement u/S 164 Cr.P.C. of PW2. Ext.-4 : Statement u/S 164 Cr.P.C. of PW3.

Ext.-5 : Medical report of PW3.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Kangkan Kr. Thakuria.

PW2- Victim-A.

PW3- Victim-B.

PW4- Dr. Chandan Saha.

(G) Defence witnesses : Nil.(H) Court witnesses : Nil.

(N. Talukdar)
Addl. Sessions Judge.
Udalguri.