

IN THE COURT OF THE SPECIAL JUDGE

CHIRANG, KAJALGAON.

Special (POCSO) Case No. 8(RKT)/2015

U/S 328/372 IPC R/W 5(1)(a)(d) Immoral Traffic (Prevention) Act R/W Section 11 of POCSO Act.

State of Assam

Vs.

Smt. Premji Narzary Smt. Helima Narzary

.....Accused

PRESENT : Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Smt. S.M. Basumatary, Sri M. Islam, Ld. Advocates

Date of evidence

: 18.09.17, 21.02.18,

20.04.18, 25.05.18

Date of Argument

: 02.06.2018

Date of Judgment

: 02.06.2018

JUDGMENT AND ORDER

1. The prosecution case in brief is that on 18.07.2015, at about 8 missing and in spite of searching at different houses of the relatives, she was not found and her mobile phone was found switched off. Finally, on 20.07.15 in the morning hours, the informant came to know from the victim through

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2. The matter was informed to the O/C, Runikhata Police Station who accordingly registered a case being Runikhata P.S. Case No. 36/2015 U/S 120(B)/372/328/34 IPC R/W Section 5(1)(a)(ii) of Immoral Traffic Act R/W Section 4 of POCSO Act and entrusted S.I. Nobin Boro, I/C, Bengtol O.P. to investigate the case. Accordingly, the Investigating Officer arrested the accused, visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement U/S 164 CrPC and after completion of investigation, submitted charge-sheet against the accused persons, namely, Premji Narzary and Helima Narzary U/S 120(B)/372/328/34 IPC R/W Section 5(1)(a)(ii) of Immoral Traffic Act R/W Section 4 of POCSO Act. Later on, accused persons were released on bail. After receiving charge sheet, copies of relevant documents were furnished to the accused persons. On perusal of police papers and hearing both sides, having found a prima facie case, my learned predecessor framed charge U/S 372 IPC read with Section 5(1)(a)(d) of Immoral Traffic Act R/W Section 12 (11) of POCSO Act against accused Premji Narzary and U/S 328/372 IPC read with Section 5(1)(a)(d) of Immoral Traffic Act R/W Section 12 (11) of POCSO Act against accused Helima Narzary.

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- 3. In support of the case prosecution side examined as many as 7 (seven) witnesses.
- Following witnesses are examined:-
 - (1) Sri Acharu Narzary as PW 1
 - (2) Victim as PW 2
 - (3) Sri Sanswrang Muchahary as PW 3

- (4) Sri Upendra Brahma as PW 4
- (5) Sri Ishikiash Muchahary as PW 5
- (6) Sri Biliphang Muchahary as PW 6
- (7) S.I. Nobin Boro as PW 7 (I.O.)
- 5. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.
- 1. Seizure list was exhibited as Ext.2, charge-sheet was exhibited as Ext.3 and sketch map was exhibited as Ext.4.
- Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.
- 8. Now points for consideration:-

For the offence U/S 372 of IPC

1. Whether on 19.07.2015, accused Premji Narzary let the minor victim to hire by one youth at Guwahati for the purpose of prostitution and prior to 1½ month from 13.07.15 and on 13.07.16, accused Helima Narzary let the minor victim to hire by two youths for the purpose of prostitution?

For the offence U/S 328 of IPC

2. Whether prior to 1½ month from 13.07.15, accused Helima Narzary caused the victim, a minor girl to take beer, which is an intoxicated drink with intent to carry out prostitution?

For the offence U/S 5(1)(a)(d) of Immoral Traffic (Prevention) Act

3. Whether on 19.07.2015, accused Premji Narzary procured and induced the victim, a minor girl under the age of 18 years to carry on prostitution and prior to 1½ month from 13.07.15 and

Special Judge, Chirang, Kajalgaon on 13.07.16, accused Helima Narzary procured and induced the victim, a minor girl under the age of 18 years to carry on prostitution?

For the offence U/S 12 (11) of POCSO Act

4. Whether on 19.07.2015, accused Premji Narzary, with sexual intent, made the victim, a child to exhibit her body before one youth at a hotel at Guwahati and prior to 1½ month from 13.07.15 and on 13.07.16, accused Helima Narzary, with sexual intent, made the victim, a child to exhibit her body before two youths?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record which were adduced by prosecution in support of their case.
- 10. In present case at hand, victim is the main witness. Other witnesses heard the entire incident from her. PW 1 is the informant and father of the victim. According to PW 1, victim reported him that on the date of occurrence, victim went outside along with the accused Premji Narzary and after returning, members of ABSU caught them and produced before the Bengtol P.S. He deposed that according to his daughter, no any evil act was committed by accused during her stay in different places. The villagers and members of ABSU caught them because she was going with the present accused persons.
- 11. Victim was examined as PW 2. She deposed that occurrence took place before two years ago. At that time, she was reading in Class-X at Bengtol Higher Secondary School. On the date of occurrence, school was closed. She went outside and stayed in the house of accused Premji Narzary. She along with accused Premji and her brother went to Guwahati. They stayed the night in a hotel. They booked two rooms. In one room, she along with Premji was sleeping. In other room, brother of Premji was sleeping. After that they returned. When they were returning, on the way, some villagers

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obstructed them and asked them from where they were coming. Some of the members of ABSU beat her and asked different questions. They also rebuked her for which she had given false statement before the police as well as Magistrate. The statement of the victim recorded U/S 164 CrPC was exhibited as Ext.1. In the said statement, victim narrated a separate story. According to said statement, accused Helima Narzary took her to different places, particularly Kokrajhar, Bongaigaon and Guwahati. Some persons were also involved with her for sexual relationship. She could not identify the persons who committed illicit sexual intercourse with her. These facts were totally denied by the victim during her later deposition. She deposed that according to advice of the members of ABSU, she had deposed such false story before the Magistrate. Victim was minor at the time of occurrence because she was reading in Class-X. During evidence victim stated nothing which is criminal against the accused.

- 12. PW 3, PW 4 and PW 5 heard about the incident. They had no any specific knowledge about the incident. They heard the incident when victim along with the accused persons were caught by the members of ABSU and villagers. They only heard that present accused persons took the victim for illicit trade for which they were travelling different places.
- 13. PW 6 is the brother-in-law of the victim. He deposed that in the year 2015, father of the victim informed him that later was missing since morning and her mobile phone was in switch off mode. After knowing that fact, he also rang the victim but found her mobile phone in switch off mode. On next day, he contacted the victim from whom he knew that she was in Rolling Mill, Bongaigaon. Accordingly, PW 6 went to Bongaigaon and brought the victim. He found the victim in the house of the accused Premji Narzary. The local people caught Premji Narzary and handed over to the villagers. Nothing was reported to him by the victim.
- 14. PW 7 is the Investigating Officer. He deposed that after getting information on 21.07.15 that accused persons were caught by villagers at the house of one Acharu Narzary, he proceeded to the place of occurrence. He found both the accused persons, namely, Premji Narzary and Helima Narzary

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on the spot who were caught by villagers. It was alleged that accused persons took the victim girl for some illicit purposes. He also found the victim at the place of occurrence. Then he recorded the statement of the victim, sent her for medical examination and for recording her statement U/S 164 CrPC. According to I.O., victim was taken to Bongaigaon, Guwahati and Kokrajhar. I.O. visited Kokrajhar and examined witnesses thereof but he did not visit Bongaigaon and Guwahati. He collected medical report of the victim and on the basis of said medical examination report, age of the victim was ascertained. He did not collect school certificate and birth certificate of the victim. During the time of investigation, he handed over the case diary to one Inspector Gauri Kalita. The PW 7 clearly stated that he did not trace out the places where alleged immoral acts were committed. He did not get any evidence except the statement made by victim. The I.O. admitted that he did the investigation wrongly without following proper procedure. Though case was filed under provision of POCSO Act, but who committed the offence was not revealed during the time of investigation.

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15. After going through the entire evidence on record, it is found that the villagers found the victim along with the present accused persons. It was alleged that she was taken by them for illicit purpose. This is nothing but doubt in the minds of the people. Except this, no any evidence was collected by the Investigating Officer during entire investigation. The victim though stated some facts against the accused persons alleging that they took her to different places for illicit purposes, but no any evidence was collected from said places by the I.O. after visiting the same. No any person was arrested regarding any offence related to Section 12 of POCSO Act. So, regarding Section 12, accused was not asserted. Regarding IPC offence, though two persons were named as accused, but investigating agency failed to establish any material or act against them. The ingredients of these sections are not proved at all. The statement of the victim is the basis to file charge-sheet as stated by PW 7. The victim stated that she had given such type of statements as she was threatened by the members of ABSU and villagers. PW 1 also stated that the victim did not state to him any story as narrated by her before the Magistrate or police U/S 164 and 161 CrPC. The prosecution failed to establish any one of the offences mentioned above against the present

accused persons. All points remained as not proved. Accused persons are not found guilty.

ORDER

- 16. Prosecution failed to prove the case U/S 372 IPC R/W Section 5(1)(a)(d) of Immoral Traffic (Prevention) Act R/W Section 12 (11) of POCSO Act against accused Premji Narzary and U/S 328/372 IPC R/W Section 5(1)(a)(d) of Immoral Traffic (Prevention) Act R/W Section 12 (11) of POCSO Act against accused Helima Narzary. Accused persons are acquitted and set at liberty. They are directed to furnish bail bond of Rs. 10,000/- each with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, they are allowed to remain in previous bail.
- Seized articles shall be disposed of according to law.
- 18. A copy of this judgment shall be given to the District Magistrate, Chirang for information.
- 19. Given under my sign and seal of this Court on this the 2nd day of June, 2018, at Kajalgaon, Chirang.

Dibys yob Mulah (D.J. Mahanta) 2/6/18

Dictated and corrected by me,

(D.J. Mahanta)
Special Judge,
Special Judge,
Chirang. Kajalgaon

<u>APPENDIX</u>

Prosecution witness:

PW 1 – Sri Acharu Narzary

PW 2 - Victim

PW 3 - Sri Sanswrang Muchahary

PW 4 - Sri Upendra Brahma

PW 5 - Sri Ishikiash Muchahary

PW 6 - Sri Biliphang Muchahary

PW 7 - S.I. Nobin Boro (I.O.)

Exhibit (Prosecution):

Ext-1 Statement of the victim U/S 164 Cr.P.C.

Ext-2 Seizure list

Ext-3 Charge-sheet

Ext-4 Sketch map

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta)
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