## IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

# Spl.(POCSO) Case No.8 of 2016

(U/S:363/366/376(2)(i) I.P.C. R/W Sec.4 of POCSO Act).

(Committed by Chief Judicial Magistrate, Mangaldai in G.R.case No.1628/2015).

State Versus

Shahjahan Ali S/O Lt.Intaz Ali Vill- Chakrabasti P.S. Dalgaon, District-Darrang(Assam)

-Accused.

PRESENT: Sri P.Saikia,A.J.S., Sessions Judge. Darrang,Mangaldai.

#### **APPERANCE:**

For the Prosecution: Sri G.R.Baruah, P.P., Mangaldai

AND

For the accused : Akramul Ali, Advocate.

Evidence recorded on :18/03/17, 01/04/17, 12/04/17 &

13/06/17.

Argument heard on : 16/06/17.

Judgment delivered on: 30/06/2017.

#### JUDGMENT.

- 1. The factual matrix of the prosecution case in brief is that on 13/07/2015 the informant Md.Nazrul Islam lodged a written report with the Officer In-charge, Dalgaon Police Station alleging inter alia that on 08/07/2015 his own younger sister (real name is withheld and henceforth referred to as the victim) aged around 14 years was found missing from his house. Accordingly, he along with other persons conducted search for her recovery, but her whereabouts could not be traced out. In the meantime, he came to know that the accused Md. Shahjahan Ali after hatching a conspiracy called the victim to come out from the house and then he took her along with him and kept one night at his house and on the next day he again took her to an unknown place.
- 2. On receipt of the written report and treating the same as an FIR the Officer-in-charge, Dalgaon P.S. registered the case vide Dalgaon PS case No.378/15 dated 13/07/15 U/S 120(B)/366(A)/34 IPC and endorsed the case for investigation to S.I. Someswar Konwar. During investigation the I.O. visited the place of occurrence, arrested the accused, forwarded him to custody, recovered the victim and got her statement recorded U/S 164 Cr.P.C. I.O. The I.O. prepared a sketch map of the place of occurrence and recorded the statement of available witnesses U/S 161 Cr.P.C. On conclusion of the investigation the I.O. laid a charge sheet U/S 173 Cr.P.C. for the offence U/S 366A/376(2)(i)/344 IPC read with Section 4 of the POCSO Act.
- 3. Accepting the charge sheet the learned Chief Judicial Magistrate, Darrang, Mangaldai took cognizance of the offences. Thereafter, having found the offences are exclusively triable by the court of Sessions committed the case to this court of Sessions on 13/07/17 after complying the provision of Section 207 Cr.P.C.

- 4. On receipt of the case on commitment my learned predecessor in Office vide order dated 16/08/2016 registered a special (POCSO) case No.8/16 for trail of the accused Shahjahan Ali in accordance with law. Thereupon my learned predecessor in Office after scrutiny of the copy of the document and relevant paper found a prima-facie case and sufficient ground for presuming that the accused has committed the offence U/S 363/376(2)(i) IPC read with Section 4 of POCSO Act. Accordingly, formal charges thereunder were framed against the accused and the charge so framed on being read over and explained to the accused to which he pleaded not guilty and claimed to stand trial.
- 5. The prosecution in order to establish its case examined as many as 6(six) witnesses including the M.O. and I.O. of the case.
- 6. After closure of the prosecution evidence the accused was examined U/S 313 Cr.P.C.. He took the plea of innocence and false accusation. The accused however, declined to enter into defence by adducing defence evidence.
- 7. Situated thus, the points for determination in the present case stand as:
  - (i)Whether on 08/07/15 at Baruapara under Dalgaon P.S. the accused Shahjahan Ali kidnapped the victim, a minor girl under the age of 18 years from the lawful guardian of his elder brother Md. Nazrul Islam?
  - (ii)Whether on the same date, time and place the accused Shahjahan Ali kidnapped or abducted the victim girl with intent that she might be compelled to marry any person against her will or knowing to be likely that she might be forced or seduced to illicit intercourse or induced her by means of criminal intimidation or by any other method to go from any place with intent or knowing it to be likely that she might be forced or seduced to illicit intercourse with another person?

- (iii)Whether on the same date, time and place under Dalgaon P.S. forcefully committed rape on the victim girl who is under 18 years of age?
- 8. I have heard argument canvassed by the learned counsel of both the sides and also evaluated evidence on record in its entirety.

#### **DISCUSSION. DECISOON AND REASONS THEREOF:**

- 9. PW1 Md. Kalimuddin who scribed the FIR. He has testified to the effect that the FIR marked as Exhibit-1 was written by him as per the instruction of the first informant Nazrul Islam. After scribing the FIR he read over the same to the first informant and after admitting the contents as correct the first informant put his thumb impression in ext.1, the FIR. He has proved and marked the thumb impression with his hand writing the name of Nazrul Islam as Ext.1(1). Ext.1(2) is his signature. He has further stated that he has no personal knowledge about the incident.
- 10.In cross-examination he has revealed that Ext.1 was written on 13/07/2015 and he had written the age of the victim therein as per the instruction of the first informant Nazrul Islam.
- 11. PW2 Md. Nazrul Islam is the first informant. According to his evidence the accused is known to him and the victim girl is his sister. He has further stated that about more than one year ago he lodged the FIR(Ext.1) against the accused for kidnapping his victim sister. Later he came to know that the accused had taken his sister to work. After work she came back to their home. At the time of occurrence his sister was aged about 18 to 19 years. In the meantime his sister has already been given in marriage with another person namely Asmat Ali.
- 12.In cross-examination he has disclosed that FIR, Ext.1 was lodged merely on suspicion against the accused and that he had given the

- age of the victim sister in the FIR on presumption. On the date of the alleged incident his sister went with the accused for doing work.
- 13. PW3 is the victim herself. She has deposed to the effect that the accused is known to her. About one year ago one day she went with accused to his aunt's house at Guwahati without informing her family members. After 3 days of staying in the aunt's house with Shahjahan Ali she returned to her home. As she was found absent from the house her brother lodged one case in this regard. It is her further evidence that the Police produced her before the Magistrate and got her statement recorded U/S 164 Cr.P.C. She has proved and marked her statement as Ext.2, wherein ext.2(1) to Ext.2(4) are her signatures. She has further stated that though she was produced in Mangaldai Civil hospital for medical examination, but on her refusal of medical examination could not be performed by the doctor. She has proved and marked ext.3 which is the Police requisition for her medical examination and ext.3(1) is her signature after her refusal to undergo medical examination.
- 14. In cross-examination she has divulged that the accused is her relative and on the day of the occurrence she went with the accused for roaming and her brother finding her absent lodged the FIR, exhibit 1. She has further disclosed that at the time of occurrence she was aged about 19 years. But she stated her age as 14 years in her statement U/S 164 Cr.P.C. as tutored by Police.
- 15. PW4 Md. Saifuddin Ahmed appears to be a hearsay witness. It is his evidence that both the victim girl and the accused are known to him. About two years ago the victim girl who is the daughter of his uncle went missing from her home. Later after 4/5 days she was recovered from Guwahati. He was told that accused had taken the victim girl. After few days of the incident the victim girl was given in marriage with some other person.

- 16. In cross-examination he has stated that he does not know how the victim girl came back to her home after the incident.
- 17.PW5 Md. Riju Ahmed is another witness who has revealed in his chief-examination that though he knew that the accused resides in his village but he does not know the victim girl and he has no knowledge about the incident at all.
- 18. PW6 Someswar Konwar who is the I.O. of the case and his evidence is found to be formal in nature. It is his evidence that on 13/07/15 he was working as Attached Officer in the Dalgaon P.S. On that day O/C of Dalgaon P.S. received an FIR from one Nazrul Islam(PW2) alleging that his minor sister was kidnapped by the accused. On the basis of the FIR, O/C, Dalgaon P.S. registered a case and entrusted him for investigation. During investigation he visited the place of occurrence, recovered the victim girl and got her statement U/S 164 Cr.P.C. He also sent the victim girl for medical examination, but the victim girl refused to undergo medical examination as a consequence she could not be medically examined. He also prepared a sketch map of the place of occurrence and also recorded the statement of witnesses U/S 161 Cr.P.C. On conclusion of investigation he found a prima-facie case against the accused person and laid the charge sheet U/S 366A/376(2)(i)/344 IPC read with Section 4 of POCSO Act. He has proved and marked charge sheet as exhibit 4; wherein ext.4(1) is his signature.
- 19.In cross-examination he has revealed that Officer-in-charge of Dalgaon P.S. entrusted him with the investigation of the case on the same date of lodging the FIR on 13/07/15 and he commenced investigation on that very day visiting the place of occurrence. He has also revealed that during investigation of the case on 20/07/15 the victim voluntarily came to Dhula Police Station.

- 20. On analysis of the foregoing discussion of evidence on record it is patent that there is no incriminating evidence adduced by any of the witnesses including the victim to substantiate the charges levelled against the accused. The most important witness in the facts and circumstances of the case ,i.e. the victim PW3 has delivered irreconcilable evidence which does not fit at all to the substratum of the prosecution case. She has asserted in point blank in her chief examination that she voluntarily went with the accused to the aunt's house of the accused at Guwahati without informing her family members. When she did not return to her house her brother PW2 lodged the First Information Report on suspicion against the accused that he might have kidnapped her. PW3 has not even made a whisper that the accused abducted her and thereafter committed rape upon her. In the face of such irreconcilable evidence of PW3(victim) whatever she stated in her statement U/S 164 Cr.P.C. has lost its significance in absence of implicating evidence in her testimony as her statement U/S 164 Cr.P.C. marked as Ext.2 can not be treated as substantive evidence as the same can only be used for the purpose of corroboration or contradiction and not beyond that. When there is no legally admissible evidence adduced by the victim PW3 to support the charges levelled against the accused and as such, the discrepant and inconsistent evidence of PW3 has eroded the credibility of the prosecution case.
- 21. In the same tune PW2 who is the brother of the victim,PW3 and the first informant of the case has adduced his evidence without implicating the accused with the offence at all resiling from the materials particulars of the case. PW2 has disclosed that he lodged the FIR, exhibit 1 against the accused merely on suspicion when he did not find his sister(PW3) at their house. Subsequently he came to know that the accused had taken his sister PW3 to work and later she came back to their house. Thus, it appears that the evidence of

PW2 also lacks implicit evidence to establish the charges levelled against the accused.

- 22. Now, turning to the testimony of PW4 and PW5 it is evident that they are only reported witnesses. They have simply stated that about 2 years ago the victim PW3 was found missing from her home. Later she was recovered after 4/5 days from Guwahati. Thus, it is seen from the testimony of PW4 and PW5 that they have disclosed virtually no inspiring evidence in support of the charge as it is obvious from their testimony that their evidence are hearsay one.
- 23. So far as the age of the victim PW3 is concerned it appears from her evidence that she stated her age as 22 years and she was also not medically examined to determine her actual age nor any School certificate was produced to determine the age of the victim. However, it appears from her statement recorded U/S 164 Cr.P.C. that she disclosed her age as 14 years at the time of the alleged incident. As a result of such discrepant statement as to the age of the victim PW3 in her statement before the Magistrate and her evidence before this Court coupled with the absence of any medical certificate or birth certificate of the victim PW3 as to her actual age it can be safely assumed that the victim being a major girl on the date of the alleged occurrence with the accused on her own volition.
- 24. Lastly, the evidence of I.O. Someswar Konwar PW6 is found to be formal in nature. It appears from his evidence that after as usual conduct of the investigation of the case he submitted the charge sheet against the accused U/S 366(A)/376)(2)(i)/344 IPC read with Section 4 of POCSO Act which is marked as exhibit 4.
- 25. Having given the benefit of doubt as to the age of the victim PW3 as major in the back ground of the incoherent evidence on record, I

Page 9 of 10

am of the considered view that the prosecution has failed to prove its case against the accused beyond all reasonable doubt to bring home the charges against the accused.

- 26.In the result, I am constrained to hold that the accused Shahjahan Ali is not guilty U/S 363/366/276(2)(i) IPC reads with Section 4 of POCSO Act. He is acquitted thereunderr. He is set at liberty forthwith.
- 27. Bail bond executed by the accused Shahjahan Ali and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this court this  $30^{th}$  day of Jujne, 2017.

Dictated and corrected by me and each page bears my signatures.

Sessions Judge Darrang,Mangaldai. (P.Saikia) Sessions Judge, Darrang,Mangaldai.

# Page 10 of 10

## **APPENDIX:**

A)Prosecution witnesses:

i)PW1 Kaimuddin Akand

ii)PW2 Md. Nazrul Islam

iii)PW3 Mustt. Hasina Begum

iv)PW4 Md. Saifuddin Ahmed

v)PW5 Md. Riju Ahmed

vi)PW6 Sri Someswar Konwar

B) Defence witness: Nil.

C) Exhibits:

i)Ext.1 FIR

ii)Ext.2 statement of victim

iii)Ext.3 Police requisition.

iv)Ext.4 charge sheet.

Sessions Judge, Darrang, Mangaldai.