IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

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

Special (POCSO) 11/2018 U/S 365 IPC R/W Section 6 of POCSO Act.

State of Assam

-Vs-

Binod Kol.....Accused.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M. Deka, Learned Advocate.

Date of Evidence : 13-11-19: 19-11-19: 30-11-19.

Date of Argument : 16-12-2019.

Date of Judgment : 17-12-2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 14-12-17, the father of the victim girl lodged an FIR with the Officer-in-Charge of Tangla P.S. alleging that on 11-12-17, at about 04 pm; the accused had taken away his minor daughter with inducement and committed rape upon her.
- On the basis of the FIR, Tangla PS Case No. 166/17, U/S 365 IPC, R/W Section 6 of POCSO Act was registered. After completion of investigation Police submitted charge-sheet U/S 365 IPC, R/W Section 6 of POCSO Act against the accused Binod Kol.

- 3. The learned Sessions Judge vide Order dated 26-07-18, transferred the case to this court for disposal.
- 4. 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 offences under Section 365 IPC, R/W Section 6 of POCSO Act, charges were framed there under and the ingredients of charges under Section 365 IPC, R/W Section 6 of POCSO Act were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution in order to prove its case examined the following 04(four) witnesses:

PW1- Dipen Boro.

PW2- Victim-A.

PW3- Renu Boro.

PW4- Dr. Chandan Saha.

- 6. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial and declined to adduce defence evidence.
- 7. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused kidnapped victim-A with the intention of causing her to be secretly and wrongfully confined?
 - (II) Whether the accused person committed aggravated penetrative sexual assault on Victim-A?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defense counsel Mr. M. Deka.
- 9. Learned defence counsel has argued that none of the prosecution witnesses including the victim girl had adduced evidence implicating the accused in the alleged incident of kidnapping and sexual assault upon the victim. He has further argued that the dispute has been amicably settled by both the parties.
- 10. 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.
- 11. PW1 is Dipen Bora, informant and father of the victim girl. In his evidence PW1 had deposed that about two years ago, the occurrence took place. On the date of occurrence, his daughter victim-A, on her way back to home from the school, went to Dimakuchi alongwith the accused. They made search for her and at about 8 pm, found her in the house of her friend in village Nedhipara. After three days of the incident, he lodged the FIR. Her daughter was produced before the Magistrate by the Police for recording her statement U/S 164 Cr.P.C. She was also sent to Udalguri civil hospital for medical examination. At the time of incident, her daughter was 17 years old. Ext-1 is the FIR. Ext-1(1) is the signature of PW1. In cross-examination, PW1 had stated that he had not seen his daughter going with the accused. He had compromised with the accused.
- 12. PW2 is victim-A. In her evidence PW2 had deposed that about two years ago, the occurrence took place. On the date of occurrence, she alongwith the accused went to the house of her friend Sunita Sarania situated in village Nedhipara. In the night, her father brought her back to home.

Thereafter her father lodged the FIR. Her statements had been recorded by the Magistrate U/S 164 Cr.P.C. She was also examined by the doctor of Udalguri civil hospital. Ext-2 is the statement recorded U/S 164 Cr.P.C. Ext-2(1) & 2(2) are the signatures of PW2. In cross-examination, PW2 had stated that she gave her statements before the learned Magistrate as tutored by her family members.

- 13. PW3 is Renu Boro, mother of the victim girl. In her evidence PW3 had deposed that about two years ago, the occurrence took place. On the date of occurrence, while her daughter did not return from the school, they made search for her and found her in the house of her friend. She went to her friend's home alongwith the accused Binod Kol. Then her husband lodged the FIR. Her daughter was aged about 18 years. In her cross-examination, PW3 had stated that she had not seen the incident. She had deposed as told by her daughter.
- 14. PW4 is Dr. Chandan Saha. In his evidence PW4 had deposed that on 15-12-2017, he was posted as M& HO 1 at Udalguri Civil Hospital. On that day he examined the victim girl vide reference Tangla PS case No 166/2017 U/S 365 IPC. On examination he found the following:

Height- 180 cm, weight- 54 Kg, teeth- 28 Nos., auxillary hair- present, pubic hair- present, marks of violence-None, clothings-Churidar.

Smear examination vide Regd. No. 17727/17 , reported by pathologist Mangaldoi Civil hospital shows no spermatozoa.

X-ray for age determination:- Approximate age 6-7 years.

Right wrist joint- Ephiphyseal union completed in upper end of radius and ulna and lower end of humerus, Right elbow joint- Epiphyseal union not completed in lower end of radius.

Urine for pregnancy (BHCG) test on 16/12/17 shows negative (-ve)

Ultrasonography of abdomen on 16/12/17 by Sinologist Dr. A. Deka reported as normal echo feature of organ imaged.

PW4 had deposed that in his opinion:-

- (1) No recent evidence of sexual coitus seen.
- (2) No marks of violence seen.
- (3) Radiological age is 16-17 years.
- (4) No spermatozoa seen in the vaginal swab.

Ext.3 is the report and Ext-3(1) is the signature of PW4.

Cross-examination of PW4 had been declined by the defence.

- 15. It appears from the evidence on record that according to victim, who has been examined as PW2, on the date of occurrence she went to the house of her friend alongwith the accused. Later in the night, her father brought her back to home. The victim had not deposed anything implicating the accused. There is no evidence at all adduced by the victim that the accused kidnapped her and sexually assaulted upon her. The parents of the victim have been examined as PW1 and PW3, who are father and mother of the victim respectively. Both PW1 and PW3 had deposed that on the date of occurrence the victim visited the house of her friend alongwith the accused and then PW1 lodged the FIR. PW1 and PW3 have also not made any allegation against the accused supporting the prosecution case. PW4, the Medical Officer, who examined the victim in connection with this case found no recent evidence of sexual intercourse or marks of violence upon the victim. Thus, medical evidence has also not supported the prosecution case.
- 16. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 365 of IPC R/W Section 6 of POCSO Act against the accused person.
- 17. Situated thus the points for determination are decided in the negative and against the prosecution.

<u>ORDER</u>

- 18. In the result, the accused Binod Kol is found not guilty under Section 365 of IPC R/W Section 6 of POCSO Act and acquitted of charges under Section 365 of IPC R/W Section 6 of POCSO Act and set at liberty forthwith.
- 19. Judgment is signed, delivered and pronounced in the open court today the 17th day of December, 2019.

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) 11/2018 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : FIR.

Ext.-2 : Statement of victim U/S 164 Cr.P.C.

Ext.-3 : Medical report.

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

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dipen Boro.

PW2- Victim-A.

PW3- Renu Boro.

PW4- Dr. Chandan Saha.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil

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