IN THE COURT OF THE SPECIAL JUDGE ::::: KOKRAJHAR

Special Case No.22/2016

State of Assam

Vs

- (1) Sri Dhruba Brahma
- (2) Sri Hindustan Basumatary Accused

Present: Sri P.K Das, AJS, Special Judge, Kokrajhar

Ld. advocate for the State : Mr N.Roy, (P.P.)

Ld. advocate for the accused: Mr S.Pahariya

Date of recording evidence : 24.3.17, 22.5.17, 08.6.17 and

20.6.2017

Date of argument : 05.7.2017 and 13.7.2017

Date of judgment : 21.7.2017

JUDGMENT

1. The story of the prosecution case is that one Smti Manjuli Basumatary lodged an FIR against the accused Dhruba Brahma and Hindustan Basumatary of Taranguri village alleging that the accused persons kidnapped her daughter Bwhwiti Basumatary, Anjima Brahma

and Laxmi Narzary from Kokrajhar Town on 08.9.16. The accused persons confined them at Gelengpung in a hotel. Accused Dhruba Brahma raped her daughter on 08.9.16 and NGO of the name and style Nerswn recovered the victim girls. They handed over the victim girls to the Officer-in-charge of Kokrajhar P.S. Accordingly, a case was registered on handing over them to the Officer-in-charge of Kokrajhar P.S. vide case No.524/16 under sections 366A/342/34 IPC, R.W. Section 4 POCSO Act. I.O. recorded the statement of the victims and the statement of the victims are also recorded in the court. They are also examined along with the accused persons. Accordingly, the case was forwarded before this court on filing the charge sheet. Accused persons appeared before this court and after supplying the copies as it is ascertained and the charges are framed against the accused persons under section 366 A/34 IPC against the accused Dhruba Brahma and Hindustan Basumatary and also under section 4 POCSO Act against the accused Dhruba Brahma. I read over and explained the charges to the accused persons to which they pleaded not guilty and claimed to be tried. The prosecution side examined their witnesses and the defence side examined none. The defence side submitted that they will not adduce evidence. The statements of the accused are recorded and their plea is total denial. Then I have heard argument of both sides.

2. **Points for determination:**

(1) Whether the accused Dhruba Brahma and Hindustan Basumatary kidnapped Bwhwiti Basumatary, Anjima Brahma and Laxmi Narzary on 08.9.16 from Kokrajhar town?

- (2) Whether the accused Dhruba Brahma committed rape on minor Bwhwiti Basumatary on 08.9.16?
- 3. Prosecution side examined PW1 Smti Mamuni Narzary, PW2 Miss Laxmi Narzary, PW3 Smti Manjuli Basumatary, PW4 Miss Bwhwiti Basumatary, PW5 Smti Purnima @ Sanima Brahma, PW6 Miss Anjima Brahma, PW7 Dr Manisha Boro Phukan, PW8 Sri Kanthaigiri Daimary and PW9 SI Jitendra Singh. The other side examined none.

4. **Decision and reasons for decision:**

I will discuss the points for decision in the light of evidence of the prosecution side. From the FIR I find Smti Manjuli Basumatary lodged an FIR with Kokrajhar P.S. against the accused persons. Accused Dhruba Brahma raped her daughter Bwhwiti a minor girl. Accordingly, a case was registered against the accused persons. In this case Mamuni Narzary PW1 Mamuni Narzary said in her deposition I find on the date of the commission of the offences she was at Dhubri. She came to know about the incident on telephonic conversion. She came home. She learnt about the incident that her daughter was caught at a hotel. Her daughter also said she went to Bhutan with her friends. NGO member took custody of her daughter and her friends from Bhutan.

5. PW2 Miss Laxmi Narzary also said in her deposition that she along with her friends visited Bhutan along with accused Dhruba

Brahma and no incident occurred. This shows that NGO member caught them on suspicion.

- 6. PW3 Smti Manjuli Basumatary also said that Bwhwiti, Laxmi and one girl went to Bhutan with accused Dhruba. She met her daughter at police station. She lodged an FIR. She lodged an FIR as per advice of NGO. The FIR was not read over and explained to her by the FIR writer that means she does know about the incident. She put her RTI on the FIR and her daughter does not say about penetrative sexual assault on her and her friends. Anjima and Laxmi were with her daughter in Bhutan. This shows that Bwhwiti was not raped by any accused. In her evidence there is nothing and her daughter also does not say to her that anybody had involved like sexual assault on her. This indicates that there is nothing on raping Bwhwiti by accused Dhruba. In this regard there is nothing about the accused Hindustan Basumatary to involve him also.
- 7. PW4 Bwhwiti Basumatary also corroborates evidence of her mother and said she slept at night in another room with her friends. Dhruba and Hindustan slept in another room. However, the waiter of the hotel demanded money from Dhruba. This indicates that no incident took place. Practically Dhruba and Hindustan did not rape her. They are innocent persons. So from evidence of PW4 victim Bwhwiti also said nothing against the accused persons on raping her by accused Dhruba and on the point of kidnapping also there is nothing that the accused kidnapped her and they took them to Bhutan.

- 8. PW4 Smti Purnima @ Sanima Brahma further said Anjima is her daughter. Laxmi and Bwhwiti went to her residence and her daughter accompanied by them and police arrested them and took their custody and her daughter went to Bhutan with the accused. From their evidence there is nothing actually the accused kidnapped the victim and also raped by anybody including Bwhwiti. So evidence of PW1 Mamuni Narzary to PW5 Purnima Brahma where from I have found nothing on the point of raping and penetrative sexual assault on Bwhwiti by the accused Dhruba.
- 9. PW6 Miss Anjima Brahma also said that Laxmi and Bwhwiti went to her house and they left for Bhutan. She does not know before going to Bhutan with Dhruba and Hindustan that they would accompany them. They had been all in hotel in different room. She could not say what happened with Bwhwiti on that particular day. Police took them to the custody. She also gave statement. Ext.1 is her statement and Ext.1(1) and Ext.1(2) are her signatures. Therefore, I find that she said nothing to the Magistrate at the time of recording her statement on the offences as alleged. Police took them to the custody on suspicion. From evidence of PW6 there is nothing on the point of commission of offence under section 4 POCSO Act by the accused Dhruba over Bwhwiti.
- 10. PW7 Dr Manisha Boro Phukan also said that she examined Bwhwiti Basumatary and on examination she found absent of hymen indicates sexual exposer but accused involved with sexual

sexual activity on that point is not there on her medical report. She could not say there was sexual exposer upon the victim Bwhwiti with the accused.

- 11. PW8 Sri Kanthaigiri Daimary also said that he took the charge of so-called victims and the accused persons. On that day from Bhutan he received three females and two males. From his evidence there is nothing.
- 12. PW9 ASI Jitendra Singh also deposed that he investigated the case. He filed the charge sheet. Ext.2 is the charge sheet and Ext.2(1) is his signature. He recorded the statements of the victims. He did not visit Bhutan for the purpose of investigation to ascertain the fact actually what happened. He did not examine D.C. of Bhutan.
- Anjima (PW6) in her statement vide Ext.1 she said he left for Bhutan with accused Dhruba for site seeing. She said about the alleged incident of raping of her friend Bwahwiti. However, she said before me that she could not say actually what happened. She totally deviated from the statement given to the Magistrate vide Ext.1 and she said otherwisely before the court. As a result of that I find discrepancy in her evidence. She said different thing before me. Therefore, she does not know about the incident it establishes. So she can not say anything as nothing happened. Evidentially value of her evidence it has almost impeached for contradictory version. I cannot believe her. It is found and at the same there is no corroboration of evidence of Bwhwiti and Laxmi also on raping by Dhruba and Hindustan the

accused. Three friends who stayed in the hotel at the relevant time. The other guardians did not say involving the accused Dhruba and Hindustan. I find there is nothing that the accused Dhruba and Hindustan raped on Bwhwiti and the medical evidence does not support so. No spermatozoa is seen in the smear supplied. This indicates that there is nothing in evidence of penetrative sexual assault as alleged against the accused. Considering the entire evidence I find on the point of kidnapping to the victims that point also has not been established. As there is no element of using force in the evidence of the so called victim. At the same time penetrative sexual assault by accused Dhruba is also not proved.

- 14. I have heard learned P.P. and learned defence counsel.
- 15. Considering their submissions I come to the conclusion on the basis of evidence on record that PW1Mamuni Narzary to PW9 ASI Jitendra Singh. I do not find any reason actually to hold the accused had committed offences as alleged under section 366A IPC, R.W. Section 4 POCSO Act against the accused. Under the circumstances I hold that the prosecution side has failed to prove the case against the accused Dhruba Brahma and Hindustan Basumatary the offence under section 366A IPC and also under section 4 POCSO Act against the accused Dhubra Brahma.

ORDER

16. Considering the foregoing discussion of evidence on record and after hearing both sides, I hold that the prosecution side

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has failed to prove the case against the accused persons. So I acquit the accused Dhruba Brahma and Hindustan Basumatary under section 366A IPC and also Sri Dhruba Brahma from the charge under section 4 POCSO Act. I cancel the bail bonds of the accused persons. I set them at liberty forthwith.

Given under my hand and seal of this Court on this 21st day of July/2017.

Directed & Corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar

Appendix

The prosecution witnesses are:

- 1) Smti Mamuni Narzary PW1
- 2) Smti Laxmi NarzaryPW2
- 3) Smti Manjuli Basumatary ..PW3
- 4) Smti Bwhwiti Basumatary..PW4
- 5) Smti Purnima Brahma ...PW5
- 6) Smti Anjima Brahma ...PW6
- 7) Dr M.Boro Phukan ...PW7
- 8) Sri Kanthaigiri Daimary ... PW8
- 9) ASI Jitendra SinghPW9

<u>The Court Witness</u>: Nil

The exhibited documents:

- 1) Ext.1 Medical report
- 2) Ext.2 Charge sheet

The Defence witness and exhibit: Nil.

Special Judge, Kokrajhar