IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.32/2018 (U/S:366 IPC/4 of POCSO Act)

State Versus Siddique Ali, S/O Md. Mushab Ali, Vill- Rowta Bagan Basti, PS-Rowta, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri A. Basumatary, P.P., Udalguri

AND

For the accused: Sri R. Das, Advocate.

Evidence recorded on :12.3.19, 28.3.19, 4.7.19, 26.7.19.

Argument heard on: 30.9.2019.

Judgment delivered on: 1.10.2019.

JUDGMENT

1. The prosecution case, as presented is traceable to the FIR dated 17.6.2018 lodged by one Akbar Ali with the O/C, Orang P.S. in narrow compass is that about 20 days ago the accused Siddique Ali kidnapped his minor (real name is withheld, henceforth referred as the victim) on inducement. On 17.6.2018 his daughter managed to escape from the clutches of the accused and appeared in his house and narrated about the incident that the accused wanted to take her to Delhi by inducement and during that period she was subjected to mental and physical torture and committed rape on her. Later, when the local village people asked the accused about the incident he confessed that he took two young girls from Rowta and sold at Delhi. The local village people after assaulting the accused informed about the matter to Orang PS and police apprehended the accused and brought to the police station.

- 2. The Officer In-charge, Orang Police Station registered a case vide Orang P.S. case No.46/18 U/S 366 IPC/4 of the POCSO Act and he himself took the task of investigation of the case. In course of investigation the I.O. visited the place of occurrence, prepared a sketch map thereof, the statement of the victim was recorded U/S 161 Cr.P.C., the victim was sent for medical examination and procured her medical examination report. The statement of the victim was also got recorded U/S 164 Cr.P.C. On completion of the investigation the I.O. laid the charge-sheet against the accused U/S 366 IPC/4 of POCSO Act to face trial in the court of law.
- 3. On the basis of the charge-sheet cognizance of the offences were taken. Whereupon on perusal of the copies of documents supplied U/S 173 Cr.P.C. a prima-facie case having been made out U/S 366 IPC/4 of POCSO Act formal charges thereunder was framed against the accused and the same on being read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
- 4. The prosecution has examined as many as 4 witnesses including the M.O and I.O. of the case. That apart, the prosecution also relied on some documents marked as exhibits annexed with the record. Defence of the accused is of total denial. His case as it could be ascertained from the trend of cross-examination, suggestions and his examination U/S 313 Cr.P.C. is that of total denial of his involvement. He has pleaded that he has been falsely implicated. However, no evidence has been adduced in support of his defence.
- 5. In the light of the above perspective, the point for determination in the present case is set up and framed as:
- (i)Whether the accused 20 days prior to 17.6.2018 at Rowta Bagan under Orang PS kidnapped the victim 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 she that she might be forced or seduced to illicit intercourse with the accused as alleged under Section 366 IPC?

- (ii) Whether the accused on the same day, time and place committed penetrative sexual assault upon the victim, aged about 16 years as alleged U/S 4 of POCSO Act?
- 6. I have heard arguments advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

7. PW1 is Dr. Kankan Thakuri, who examined the victim on 18.6.2018 in reference to Orang PS case No. 46/2018 U/S- 366 IPC R/W Sec. 4 of POCSO Act. On examination he found the following:-

Physical examination:-

Height- 144 cm, weight- 40 Kg, teeth- 24 Nos., axillary hair- present, pubic hair- shaved, breast- developed, hymen- absent , vaginal injury absent, marks of violence Nil, clothing yellow maxi black chunri.

Vaginal swab examination for spermatozoa:- no spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination: - Approximate age 12-15 years.

- (1) Right wrist joint- non united lower end of ulna and radius..
- (2) Right elbow joint- absence of united head of humerus with body not completely developed elbow joint.
- (3) Right illac crest.- Not united head of femur.

Opinion:-

- (1) Radiological age is between 12-15 years.
- (2) No spermatozoa seen in vaginal swab examination.
- (3) No mark of violence or vaginal injury.
- (4) USG- reveals single live fetus of 12 weeks 2 day gestational age.

Ext. 1 is the medical report. Ext. 1(1) is his signature.

- 8. In cross-examination, doctor has opined that the ultrasound of abdomen was done on 19.6.18 by sinologist Dr. A Deka and he reported single life fetus of 12 weeks 2 days of gestational age. The radiological examination was done on 20.6.18 by radiologist Mehul Prajapati and age was 12-15 years.
- 9. PW2 is the victim herself. Her evidence postulates that the informant is her father and the incident occurred about one year ago. Prior to two years from the date of occurrence she went to Delhi with her brother-in-law in search of work. She stayed in Delhi for about one month. While she was returning home from Delhi she got introduced to the accused. Since thereafter they grew love to each other and used to frequently talk about the love affairs in mobile phone. The accused also now and then met her which was not known by her family members. Later, one day accused came to their home and gave proposal of marriage with her. Due to absence of the parents of the accused her father did not agree to talk about her marriage with the accused. When her father refused to solemonise her marriage with the accused one day she on her own sweet will joined hands with the accused. Then the accused took her to Guwahati to solemonise marriage with her and this was not known to her family members. In this way she stayed with the accused in Guwahati for about 20 days and had co-habited with the accused on her own consent. At the time of occurrence she was 18 years old. Later, one day the accused brought her to Dalgaon and left her there. Finding no alternative, she went to her home and narrated about the incident. Thereafter, her father lodged an FIR against the accused. She still wants to get married with the accused. Her parents have also assured her to solemonise her marriage with the accused and, hence, she has no grievance against the accused. Police got her statement recorded before the Magistrate U/S 164 Cr.P.C. Ext.2 is her statement U/S 164 Cr.P.C. Ext.2(1), 2(2) and 2(3) are her signatures.

- 10. In cross-examination, she has divulged that as the accused left her abandoned after keeping with him in Guwahati without solemonising marriage as promised by him and, as such, she gave her exaggerated statement out of anger though such statements are not true. Later, she also came to know that accused could not solemonise his marriage due to lack of money during that time and he is now ready to marry her as per Muslim rites.
- 11. PW3, Akbar Ali is the informant of the case. His evidence divulged that he knows the accused. About one year ago the occurrence took place. At the material time one day after returning from his work he saw the accused had been confined by the village people when he came to his home for the marriage proposal of his daughter with him. The village people told him that accused used to come to his home during his absence to meet his victim daughter and pressurised him to lodge an FIR with the police. Accordingly he lodged the FIR regarding the incident. On being asked his victim daughter told before him that she had love affair with the accused since before the incident which she did not divulge before him. At the time of occurrence his daughter was 18 year old. As the accused came to his home for a marriage proposal of his daughter with him without being accompanied by his family members and as such the FIR was lodged against the accused. As a result of cohabitation his daughter became pregnant and gave birth to a male child. After release of the accused he will formally solemnize the marriage of his daughter with the accused though his daughter told him that she had already solemnized marriage with the accused while she was staying at Guwahati.
- 12. In cross-examination, it is disclosed that he will solemnize the marriage of his daughter with the accused as soon as the accused is released from jail. His daughter who was a major girl of 18 years cohabited with the accused on her own will on the proposal given by the accused to marry her.
- 13. PW4, Gagan Ch. Deka is the investigating officer of the case. His evidence discloses that on 18.6.2018 he was posted as Officer-in-charge of Orang police station. On that day he received one FIR lodged by Akbar Ali. On

the basis of the FIR he registered a case vide Ornag police station case No. 46/18 U/S 366 IPC; R/W sec 4 of POCSO Act and himself took up the investigation of the case. During the investigation he recorded the statement of the victim and other witnesses U/S 164 CrPC, visited the place of occurrence and prepared sketch map thereof and send the victim for her medical examination. The victim was sent before the court to record her statement U/S 164 CrPC. He arrested the accused. After collection of medical report he found a prima facie case against the accused Siddique Ali and, hence, submitted charge-sheet against him U/S 366 IPC 4 of POCSO Act. Ext. 3 is the FIR. Ext 3(1) is his endorsement and signature alongwith his note of registration of the case. Ext. 4 is the sketch map. Ext. 4(1) is his signature. Ext. 5 is the charge sheet. Ext. 5(1) is his signature.

- 14. On careful scrutiny of the evidence on record, it is easily discernable from the testimony of the victim (PW1) that she eloped with the accused on her own volition when the accused gave a proposal to marry her. She has further revealed that she did not inform her parents when she eloped with the accused with whom she had love affair since before the incident and used to talk frequently over phone. She has also admitted that her marriage was solemonised with the accused in Guwahati which was not known to his family members. In this way she stayed with the accused in Guwahati for 20 days and cohabited with him at her own consent and at the time of occurrence she was 18 years old. Later, one day the accused brought her to Dalgaon and left her there and narrated about the incident to her father. However, in cross-examination, she has further revealed that accused person came to her house to give marriage proposal but the village people confined the accused for visiting her house.
- 15. In the same fashion, the informant (PW3), the father of the victim (PW2) has narrated as to how his daughter was 18 years and at the time of occurrence eloped with the accused and went to Guwahati and started to cohabit with the accused on her own consent. Subsequently, when the accused came to their home for a marriage proposal of his daughter without being

accompanied by his family members and, as such, the FIR was lodged against the accused due to pressure from the village people. He has also stated that as the accused is lodged in the jail custody he will solemonise the marriage of his daughter with him as soon as he is released from jail custody though his daughter told him that she has already solemonised marriage with the accused in Guwahati.

- 16. There is virtually no cogent and consistent evidence adduced by the prime witness PW2 to sustain the charges levelled against the accused. Rather the victim (PW2) has disclosed her voluntary elopement with the accused on her own accord due to love affairs prior to the incident. She has also admitted of having consent of sexual co-habitation with the accused as a result of which she became pregnant. She is willing to get marriage with the accused as soon as he is released from jail, as the accused could not solemonise marriage with her socially only due to lack of money during that time. She has further revealed contrary to her statement Ext.2 that she joined hands with the accused on her own volition and thereafter engaged in voluntary cohabitation and her father (PW3) is also ready to solemonise her marriage with the accused very soon. Though Ext.2, the statement of the victim U/S 164 Cr.P.C. depicts a contradictory picture but her non-implicating evidence on the material particulars of the case renders it not admissible so much so that statement of the victim recorded U/S 164 Cr.P.C. is not a substantive evidence and the same can be taken into consideration only as a corroborative piece of evidence when supported by consistent evidence of a witness.
- 17. Having found no iota of consistent evidence in the evidence of the victim (PW2) and, as such, her statement Ext.2 cannot be taken into consideration to rope the accused with the charges levelled against him. The evidence of PW3, the father of the victim also lacks any punch to fortify the prosecution case and, as such, his evidence also stands discarded.
- 18. On cumulative consideration of the evidence on record, it is amply evident that there is not a shred of implicating evidence to bring home the

charges levelled against the accused person. Hence, the prosecution has failed to prove its case beyond all reasonable doubt and therefore, the accused is entitled to acquittal.

- 19. In the wake of the above, I am constrained to hold that the accused Siddique Ali is not guilty U/S 366 IPC/4 of the POCSO Act. Therefore, he is acquitted thereunder on benefit of doubt and set him at liberty forthwith.
- Bail bond executed by the accused 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 1st day of October,2019.

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

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Kankan Thakuria

ii)PW2 Aklima Khatun

iii)PW3 Akbar Ali

iv)PW4 Gagan Ch. Deka

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical report.

ii)Ext.2 Statement of the victim U/S 164 Cr.P.C.

iii)Ext.3 FIR.

iv)Ext.4 Sketch map. v) Ext.5 Charge-sheet.

Dictated and corrected by me.

Special Judge, Udalguri