IN THE COURT OF SPECIAL JUDGE, BARPETA

Special POCSO Case No. 113/2018
(Arising out of Baghbor P.S.Case No.186 of 2018)
U/S 366(A) IPC R/W section 4 of POCSO Act, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi Special Judge, Barpeta.

Charge framed on: - 22.01.2019

State of Assam

- Vs -

Munser Ali.....Accused person.

Date of Recording Evidence on – 03.05.2019, 24.05.2019, 20.06.2019 &

26.08.2019

Date of Hearing Argument on – 30.08.2019 Date of Delivering the Judgment on – 30.08.2019

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. Motiur Rahman, Ld. Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that on 21.07.2018 Samej Uddin lodged an ejahar in Mandia out post stating inter-alia that about 6/7 months back, accused persons named in the FIR gave a proposal to marry his daughter (X) aged about 17 years with accused No.1 but he refused to accept the proposal due to under age of his daughter. Being frustrated accused No.1 with the aid and advice of other accused persons employing various means to kidnap his daughter and finally she was kidnapped and kept her confined to some unknown place and had sexual intercourse with her. They started subjecting torture on his daughter but she some how fled away from the house of accused, so he filed the case.
- 2. Following the information, Mandia out post entered the same in the general diary being G.D.E No.364 dated 21.07.2018 and forwarded the same to Baghbor police station for registering a case. Accordingly, Baghbor police station registered a case being Baghbor P.S. case No.186/18 u/s 120(B)/365/342 IPC and Section 4 of POCSO Act was registered and ASI Mahadev Bagchi was entrusted to investigate the case.

- 3. During the course of investigation, the I/O visited the place of occurrence, drew sketch map, recorded the statement of the witnesses, sent the victim girl to court for recording her statement before Magistrate u/s 164 Cr.P.C, and also sent her for medical examination but she refused her medical examination. Finally police having found a primafacie case laid the charge sheet against Munser Ali u/s 366-A IPC and Section 4 of POCSO Act with a view to stand trial.
- 4. During the course of time, when accused entered his appearance in court having complied with the provision of section 207 Cr.P.C. this court vide order dated 22.01.2019 framed charges u/s 366-A IPC and Section 4 of POCSO Act. The particulars of the offences on being read over and explained accused person pleaded not quilty and claimed trial.
- 5. During the course of trial, the prosecution examined as many as 6 witnesses including the informant, alleged victim, the medical officer and the investigating officer.
- 6. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. but accused denied the prosecution evidence as false. However, on being asked accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

7. Now points for determination ;-

- 1. Whether on 21.07.2018 accused induced the victim girl aged about 17 years to go from her house along with him to different unknown place/places intending that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with him as alleged?
- 2. Whether on the same day and time or subsequent date accused committed penetrative sexual assault on the victim girl (X) as alleged ?

8. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence available on record.

- 9. The learned counsel appearing for the state submitted that prosecution has been able to establish its case against accused person for sustaining conviction u/s 366-A IPC and Section 4 of POCSO Act as the evidence of the victim girl has been duly corroborated by the evidence of informant, her father, with material particulars. Therefore, there is no reason to discard or disbelieve the evidence of the prosecution witnesses particularly the evidence of the victim girl. Therefore, the learned Addl. P.P. submits that court may punish the accused appropriately to send a signal to others so that others can fear and refrain from committing such offences again.
- 10. On the other hand, the learned counsel appearing for the accused person vehemently disputed the submission of the learned Addl. P.P. contending that in the present case, there is absolutely no evidence for sustaining conviction for the offence u/s 366-A IPC and Section 4 of POCSO Act.
- 11. The evidence of the so called victim is unworthy of credit as there is no such evidence to implicate the accused. The fact is that the alleged victim accompanied the accused on her own will and subsequently, back tracked. The victim herself belied her case as during the course of investigation she even refused her medical examination by doctor. This clearly shows that her evidence of alleged sexual intercourse has no basis at all. The evidence of the victim has not been

corroborated by medical officer because the doctor did not get the opportunity to examine her to reveal the truth. So, in the absence of any credible medical evidence the mere statement of the victim is unworthy of credit and totally unsafe to rely on such uncorroborated testimony.

- 12. The evidence of other witnesses namely-PW-3 Sabur Ali @ Saburuddin, PW-4 Abul Kaser have no bearing in the prosecution case as their evidence is in the nature of hearsay evidence that too they did not speak from whom they heard it. Therefore, no reliance can be placed on their evidence.
- 13. The evidence of PW-5 doctor Mamta Devi negated the case of the alleged victim as she did not get opportunity to examine the victim to ascertain the truth of alleged sexual intercourse. The evidence of I/O in the absence of any credible evidence from the victim does not help the prosecution case as his evidence is formal in nature. Moreover, the prosecution also failed to prove the age of the victim girl to show that she was in fact minor at the time of commission of the alleged offence. So, on this count also prosecution failed to substantiate the case. Considering the prosecution evidence as a whole in a dispassionate manner and the arguments of the learned counsel for both sides this court is in full agreement with the submission made by the learned defence counsel that the prosecution has miserably failed to establish the case against the accused u/s 366-A IPC and Section 4 of POCSO Act beyond all reasonable doubt.
- 14. In the result, this court has no option nut to acquit the accused person from the charges u/s 366-A IPC and section 4 of POCSO Act on the ground of benefit of doubt and set him at liberty forthwith.
- 15. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided U/S 437(A) Cr.P.C.
- 16. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 17. Let the case record be consigned to record room after completing the formalities.
- 18. Given under my hand and seal of this Court on this 30th day of August, 2019, at Barpeta.

Dictated & Corrected by me,

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

- 1. The prosecution has examined the following 6 nos. of witnesses :-
- PW-1 = Samej Uddin, the informant.
- PW-2 = victim girl(X).
- PW-3 = Sabur Ali @ Saburuddin.
- PW-4 = Abul Kaser.
- PW-5 = Dr. Mamta Devi, M/O.
- PW-6 = Mahadev Bagchi, I/O.
- 2. The prosecution has exhibited following document :-
- Ext.1 =1 is the statement of victim u/s 164 Cr.P.C. before Magistrate.
- Ext.= 1(1) and 1(2) are the signatures of victim.
- Ext.2= is the FIR.
- Ext.2(1)= is the signature of Mantu Das, S/I.
- Ext.3= is the sketch map.
- Ext.3(1)= is the signature of I/O Mahadev Bagchi.
- Ext.4= is the charge sheet.
- Ext.4(1)= is the signature of I/O Mahadev Bagchi.
- Ext.A(1) = is the birth certificate of victim.

Sd/-(Sri C. B. Gogoi) Special Judge, Barpeta.