IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.19/2017 (U/S: 370(a)/342 IPC R/W Sec. 6 of POCSO Act)

State
Versus
Bipen Kumar,
S/O Sri Ashnu Kumar,
Vill- Nonaipara,
PS-Panery, Dist-Udalguri.

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

APPERANCE:

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

AND

For the accused: Mr. M.C. Narzary, Advocate.

Evidence recorded on: 27.3.18, 31.5.18, 21.6.18, 9.1.19,

5.7.19.

Argument heard on: 5.7.2019.

Judgment delivered on: 9.7.2019.

JUDGMENT

1. The prosecution case, as described in the FIR, in short, is that on 15.11.2016 the informant cum victim (real name is withheld, henceforth referred as to the victim) longed an FIR with the Officer-In-Charge, of Harising PS, alleging amonst others that on 13.11.2016 at about 11 AM the accused Bipen Kumar on the pretext of arranging job for her and Julita Tanti in Delhi induced them to come to Dimakuchi. During the night the accused kept them confined in one house. The local resident of Dimakuchi rescued them from the said house brought them Dimakuchi PS. Thereafter, they were taken to the Harisinga PS alongwith the accused. Later, she came to know that accused wanted to traffic them to Delhi with an ulterior motive.

- 2. Based on the FIR the O/C, Harisinga PS registered a case vide Harisinga Police Station case No.68/2016 U/S 370(A)/342 IPC and undertaken the investigation of the case. On completion of as usual investigation of the case the accused Bipen Kumar was charge-sheeted for the offences U/S 370A/342 IPC, R/W Sec.6 of POCSO Act to face trial.
- 3. On receipt of the charge sheet Special (POCSO) case No. 19/2017 was registered. Thereupon, process was issued for appearance of the accused. The accused entered his appearance and supplied with the copies of the police documents U/S 173 Cr.P.C.
- 4. Whereupon, my learned predecessor in office on scrutiny of the materials on record found a prima-facie case and sufficient ground to proceed against the accused U/S 370(a)/342 IPC R/W Sec. 6 of POCSO Act and, accordingly, charges thereunder were framed and the same on being read over and explained to him to which he pleaded not guilty and claimed to be tried.
- 5. Situated thus, the points for determination in the present case are set up and framed as:-
- (1) Whether the accused on 13.11.15 at about 11 AM trafficked the victim and Sri Julita Tanti to recruit in Delhi and thereby committed an offence punishable under Section 370 (a) IPC, and within my cognizance?
- (2) Whether the accused on the same day, time wrongfully confined the victim and Sri Julita Tanti at Dimakuchi and thereby committed an offence punishable under Section 342 IPC, and within my cognizance?
- (3) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 17 years, and thereby committed an offence punishable under Section 6 of POCSO Act, and within my cognizance

- 6. Before proceeding further it is pertinent to mention at this stage that after examining all the witnesses including the I.O. except the informant victim, the learned P.P. for the State submitted a petition whereby he had urged before this court to close the prosecution evidence without examining the informant cum victim to decide the merit of the case as her whereabouts could not be located by the police despite issuance of several process to procure her evidence. Only after examination of her husband Bipul Basumatary as CW1, it has come to light that his wife (informant cum victim) left the matrimonial home while he went to Chennai for job. In site of best search she could not be traced out.
- 7. In the light of the petition of the learned P.P. for the State, I also carefully evaluated the materials on record and report of the unserved summons issued upon the informant cum victim as well as the statement of Bipul Basumatary recorded by this court in this regard as CW1. As per CW1, his wife is still traceless and her whereabouts is not known. Considering all aspects and due regard being heard to the fact that this case has been pending for a long period only for the evidence of informant cum victim and her whereabouts could not be located and she would also not likely to be found in near future, the petition of the learned P.P. is allowed to consider the merit of the case on the evidence available on the record.
- 8. The prosecution in all has tendered evidence of five witnesses including the other victim of the case. On close of the prosecution evidence the statement of the accused was recorded U/S 313 Cr.P.C. His plea is of total denial and no defence evidence was laid in support of his plea.
- 9. I have heard argument 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 THEREFOR:

- 10. PW1 is one of the victims of this case. She has stated that one day informant told her that she would go to Delhi. She told her, since she is poor so she also wanted to go to Delhi with her. They decided to go on the next day. They stayed at the house of one person belongs to Muslim community at Dimakuchi. At night someone touched her body but she could not identify the person. Informant lodged the FIR. She was examined by the doctor. Her statement was also recorded U/S 164 Cr.P.C. before the Magistrate where she I put her thumb impression.
- 11. In cross-examination, she has stated that she does not want to proceed with the case and she has no objection if the accused is acquitted.
- 12. The evidence of the victim (PW1) is found to be totally obscured and equivocal and her evidence does not disclose any incriminating evidence as to involvement of the accused.
- 13. Likewise, the evidence of PW2, Osman Ali also does not disclose any plausible evidence against the accused as he knows nothing about the incident.
- 14. Next is the testimony of PW3, Dr.Bimal Ch. Boro. According to his evidence, on 15.11.16 he examined the victim Julita Tanti and as per his opinion Radiological age of the victim Julita Tanti approximatly 16-17 years. There was no violence mark seen. Pregnancy test was not done. He has proved and marked his report as Ext.1. Ext.1(1) is his signature.
- 15. In cross-examination, he has stated that he did not collect semen for slide test. He has not mentioned in his examination report whether he had found any sign of recent sexual intercourse with the victim.

- 16. Thus, it is evidently evident that the evidence of the Medical Officer (PW3) also fails to supplement any material evidence to support the prosecution case.
- 17. PW4, Nripen Ch. Tamuli is one of the investigating officers of the case. His evidence appears to be formal one. According to his evidence he initially investigate the case on the basis of the FIR lodged by the informant cum victim. During the period of investigation he found that the place of occurrence falls under Dimakuchi PS and, as such, on conclusion of the preliminary investigation he submitted the case diary to the O/C, Harisinga PS for taking necessary action.
- 18. Finally, we come to the evidence of the other investigating officer Mukut Ali PW5. He has stated that after entrust of the case for investigation he visited the place of occurrence, prepared the site plane thereof and also recorded the statement of witnesses. On completion of the preliminary investigation of the case he handed over the case diary to the O/C, Dimakuchi PS, Dilip Mili who eventually submitted the charge-sheet against the accused Bipen Kumar U/S 370(A)/342; R/W Sec 6 of POCSO Act. He has proved and marked the charge-sheet as Ext. 3. Ext. 3(1) is the signature of O/C, Dilip Mili.
- 19. In cross-examination, he stated that the place of occurrence is the Sonajuli TE and there are houses near the place of occurrence. He did not seize anything in connection with this case.
- 20. In the backdrop of the faltering evidence of the vital witness victim (PW1), which is also not being supported by the medical evidence of M.O. (PW3), the other evidence of both the investigating officers PW4 and PW5 are merely academic one. In other words, there is no legally admissible evidence to bring home the charges levelled against the accused person as the victim (PW1) herself departed from the material particulars of the case totally. Hence, I have no alternative but to hold that the prosecution case has remained to be proved and, therefore, the accused is entitled to acquittal.

21. In the result, I am constrained to hold that the accused Bipen Kumar is not guilty U/S 370(a)/342 IPC R/W Sec. 6 of the POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.

Given under my hand and seal of this Court this 9th day of July, 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 Julita Tantiii)PW2 Osman Ali

iii)PW3 Dr. Bimal Ch. Boro iv)PW4 Nripen Ch. Tamuli

v)PW5 Mukut Ali

vi)PW6 Indra Mohan Singha vii)PW7 Sangita Biswas viii)PW8 Kunjalata Singha ix) PW9 Nirmal Biswas x) PW10 Dipali Biswas xi) PW11 Bhushan Ch. Nath

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical examination report

ii)Ext.2 Sketch Map iii)Ext.3 Charge-sheet.

Dictated and corrected by me.

Special Judge, Udalguri