IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.33/2017 (U/S:4 of POCSO Act)

State
Versus
Kishak Deka
S/O Late Ratneswar Deka
Vill- Ukhura,
PS-Nalbari, Dist-Nalbari.

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

APPERANCE:

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri K. Dutta, Advocate.

Evidence recorded on: 20.7.18, 28.9.18, 11.10.18.

Argument heard on: 20.11.2018.

Judgment delivered on: 29.11.2018.

<u>JUDGMENT</u>

The factual matrix of the prosecution case shorn of unnecessary details is that on 17.8.17, the informant Smti. Lila Kachari lodged a written report with the O/C, Tangla P.S. alleging, inter-alia, that her minor daughter (real name is withheld, henceforth referred as the victim) went to school on 16.8.17 but did not return. She made search for her recovery but could not trace out her whereabouts.

2. Treating the written report as the FIR the Officer In-charge, Tangla Police Station registered a case vide Tangla P.S. case No.113/17 U/S 366 IPC for investigation. On conclusion of as usual investigation the police laid the

charge-sheet against the accused Kishak Deka U/S 366 IPC, R/W Sec.4 of POCSO Act and Sec. 9 of Child Marriage Act, 2006 to face trial in the court of law.

- 3. On receipt of the charge sheet alongwith the case diary a Special (POCSO) case No. 33/2017 was registered and the presence of the accused was ensured by the process of the court. On due appearance of the accused copy of the police documents supplied U/S 173 Cr.P.C. furnished to him.
- 4. Whereupon, on assessing the relevant papers including the case diary and having heard learned counsel of both sides my learned predecessor in office having found a prima-facie case and sufficient ground for presuming that the accused had committed the offence U/S 4 of POCSO Act and, therefore, a formal charge 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.
- 5. In order to romp home the charge the prosecution has examined five witnesses including the informant, victim, M.O and I.O. of the case and also relied on certain documents mark as exhibits.
- 6. The defence of the accused is of complete denial. The accused has pleaded in his statement U/S 313 Cr.P.C. that he is totally innocent and he has been falsely implicated. However, no evidence has been adduced in support of his defence.
- 7. In the light of the above perspective, the point for determination in the present case is set up and framed as:-

Whether the accused on 16.8.17 at Chamuapara under Tangla PS committed penetrative sexual assault upon the victim, aged about 14 years as alleged U/S 4 of POCSO Act?

8. 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 THEREOF:

- 9. PW1, Dr. Bhadra kanta Sarma is the Medical Officer of this case, who examined the victim on 18.8.17 in connection with this case. On examination he found the (1) Radiological age approximately 16-17 years, (2) Hymen torn (Old), (3) Not pregnant. The medical report is marked as Ext.1 wherein Ext.1(1) is his signature. the cross-examination of the witness was dispensed with.
- 10. PW2, Smti. Lila Kachari is the first informant of this case. She has stated to the effect that her victim daughter went to school on 16.8.17. In the evening after break of the school she did not return to house till in the evening. They made search of her whereabouts, but she could not be trace out and on the next day she lodged an FIR with Tangla P.S. She did not know as to who had taken away the victim girl. After recovery of her victim daughter she asked her about her whereabouts but her daughter did not reveal anything. She has proved and marked the FIR lodged by her as Ext.2 wherein Ext.2(1) is her signature.
- 11. In her cross-examination she has revealed that she does not know whether the accused had taken away her daughter on the day of occurrence.
- 12. PW3 is the victim. She has deposed in her evidence that she knows the accused who is presently her husband. Informant is her mother. On the day of occurrence she on her own accord and volition eloped with the accused due to having love affairs with him. After elopement she solemnized her marriage with the accused. As her mother was not aware of the love affairs with the accused lodged an FIR with the police and after coming to know about the FIR she surrendered before the police and police got her statement recorded under Section 164 Cr.P.C. She also underwent medical examination. At the time of

the incident she was 18 years old. Police handed over her to her parents. Thereafter her marriage was formally solemnized with the accused with the consent of the family of the both the sides. At present she is staying with the accused as his wife. She voluntarily joined hands with the accused to get married. Ext.3 is her statement recorded under Section 164 Cr.P.C. wherein Ext.3(1) is her signature.

- 13. In cross-examination she has stated that she voluntarily eloped with the accused.
- 14. PW4, Padumi Rabha is a reported witness. Her evidence is that on the day of occurrence she came to know that the victim daughter of the informant was found missing from their house. Later she came to know that the victim surrendered before the police and thereafter the victim got married with the accused. Her cross-examination is declined by the defence.
- 15. PW5, Mrs. Jamuna Das is the investigating officer of the case Her evidence is found to be formal in nature. She conducted her as usual investigation in connection with this case on being entrusted by the Officer-Incharge of Tangla PS. During the investigation she arrested the accused and the victim who surrendered before the police station was sent for medical examination and also got her statement recorded U/S 164 Cr.P.C. She also prepared one sketch map of the place of occurrence. On completion of investigation she laid the charge-sheet against the accused Kishak Deka U/S 366 IPC R/W Sec.4 of POCSO Act and R/W Sec. 9 of Child Marriage Act,2006. Ext.4 is the sketch map. Ext.4(1) is her signature. Ext.5 is the charge-sheet. Ext.5(10 is her signature. Her cross-examination is declined by defence.
- 16. On analysis of the foregoing evidence on record, it is patent from the evidence on record that none of the witnesses including the informant and victim have supported the prosecution case. That apart, the evidence of Medical Officer has ruled out commission of rape on the victim and as per his radiological report the age of the victim was found to be 16 to 17 years. When the Medical Officer (PW1) has ruled out the sign of sexual intercourse with the

accused at the material time in connection with this case the evidence of the victim is of utmost important to bring home the charge levelled against the accused. But the testimony of the victim PW1 is found to be totally contradictory to the prosecution case as regards the commission of alleged charge of penetrative sexual assault. She has remained silent in this regard and rather she has disclosed about her voluntary elopement with the accused on the day of incident without informing her parents and her marriage with the accused subsequent to the incident formally with the consent of the parents of both sides.

- 17. The victim (PW3) has revealed point blank that accused never kidnapped her nor committed penetrative sexual assault upon her when she eloped away with the accused and subsequently surrendered before the police after lodgment of the FIR by her mother (PW2). It has already been noticed from the medical report (Ext.1) of PW1 that he did not find any sign of sexual intercourse on examination of the victim supports the version of the victim (PW3) that she being a major girl eloped with the accused on her own sweet will and later got married with the accused with full consent of both the parties.
- 18. The evidence of PW2, the mother of the victim also does not disclose incriminating evidence against the accused to salvage the prosecution case in the backdrop of the irreconcible evidence adduced by the victim (PW3) herself. Though PW2 lodged the FIR she has not adduced no iota of evidence as regards the charge levelled against the accused so much so that the FIR (Ext.2) also does not reveal anything in this respect except the fact that on the day of occurrence when she found her victim daughter (PW3) missing from their house she lodged the FIR on the next date.
- 19. Summing up the analyzing of the forgoing evidence on record it appears that the evidence on record including that of victim PW3 is found to be totally brittle to prove the ingredients of charge against the accused. Having

found not a snippet of implicating evidence to bring home the guilt of the accused on record, I have no hesitation but to acquit the accused.

- 20. In the result, I am constrained to hold that the accused Kishak Deka is not guilty U/S 4 of the POCSO Act. Therefore, he is acquitted thereunder on and set him at liberty forthwith.
- 21 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 29th day of November,2018.

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. Bhadra Kanta Sarma

ii)PW2 Lila Kachari iii)PW3 Gitanjali Kachari iv)PW4 Padumi Rabha v)PW5 Mrs. Jamuna Das

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical report.

ii)Ext.2 FIR.

iii)Ext.3 Statement of the victim U/S 164 Cr.P.C.

iv) Ext.4 Sketch Map v)Ext.5 Charge sheet.

Dictated and corrected by me.

Special Judge, Udalguri