

Special (POCSO) Case No. 11/2019.

U/S - 366(A) of the IPC read with Sec. 4 of POCSO Act

State

- Versus -

Samsul Islam Hazarika @ Nimon

...... Accused.

PRESENT: Shri D. Bhattacharjee, AJS, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri N.I. Laskar, Ld. Advocate.

Dates of recording evidence

:- 14.08.2019.

Date of recording statement u/s 313, CrPC :- 17.08.2019.

Date of Argument

:- 17.08.2019.

Date of Judgment

:- 17.08.2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 11.12.2018 the informant Abjal Hussain Barbhuiya lodged an ejahar with the O/c, Hailakandi Police Station alleging that on 02.12.2018 at about 1.30 PM while his minor sister i.e. the victim was going to attend private tuition at Boalipar, on the way, the accused Samsul Islam Hazarika appeared and forcefully kidnapped the victim in an Alto vehicle and in the said vehicle, the accused also committed rape on her and took some obscene photographs of the victim making her nude.
- 2. On receipt of the ejahar, the same was registered as Hailakandi Police Station Case No. 989/2018 under Sec. 366/376/511/34 of the IPC and accordingly, police started investigation of the case.

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- During investigation, police visited the place of occurrence, recorded statements of witnesses, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Samsul Islam Hazarika @ Nimon under Sec. 366, IPC read with Sec. 8 of the POCSO Act, 2012.
- 4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Samsul Islam Hazarika @ Nimon under Sec. 366(A) of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- number of PWs including the victim of the case. The accused person has been examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- **7.** Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION:

- (i) Whether the accused person on 2.12.2018 at about 1.30 PM at Sayedbond Pt. I under Algapur PS induced the victim to go with him with intent that she may be or knowing that she would be forced or seduced to illicit intercourse and thereby the accused has committed the offence punishable under Sec. 366(A), IPC?
- (ii) Whether the accused person after kidnapping the victim, committed penetrative sexual assault on the victim and thereby the accused *Contd.......P/3.*



committed an offence punishable under Sec. 4 of the POCSO Act?

DISCUSSION, REASONS AND DECISION THEREOF:

Brother of the victim, has deposed that on 2.12.2018 at about 1.30 PM while his sister was going to her private tuition from the house and after being reached at Boalipar market, the accused person alongwith 2 other boys appeared there with a vehicle and since his sister had earlier introduction with the accused, the accused took her towards her private tuition centre and on the way, the accused and his friends took photographs of his sister. The informant has further deposed that when he heard that the accused person took photographs of his sister, he filed the case vide Ext. 1 considering the future safety of his sister.

In cross examination, the informant has stated that he had no conversation with his sister regarding the incident and he lodged the FIR after hearing about the incident from his mother.

Prelevant day while she was going towards her private tuition centre and after being reached at Boalipar market, the accused and his 2 friends appeared there with a vehicle and as the accused was well acquainted to her, she boarded the vehicle and in the vehicle, the friends of the accused persons uttered some unparliamentary words towards her, to which she was astonished and on returning home, she reported the incident to her mother and thereafter, her brother filed the case. It is also deposed by the victim that police got her medically examined and her statement was recorded by the Magistrate vide Ext. 2, wherein Ext. 2(1) is her signature.

During cross examination, the victim has stated that she made her statement before the Magistrate on being tutored and the accused person did not commit any bad with her and as such, she has got no allegation against the accused.

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In the instant case, the prime witness is the victim (PW.2)

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Appendix :-

Oral evidences :-

PW. 1, Abjal Hussain Barbhuiya &

PW. 2, The victim.

Documentary evidences:-

Ext. 1- FIR &

Ext. 2- Statement of the victim under Sec. 164, CrPC.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

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