IN THE COURT OF SPECIAL JUDGE, NORTH SALMARA, ABHAYAPURI

Present: Shri P. Bora, A.J.S.

Special Judge

North Salmara, Abhayapuri

Special (P) 15 (A) OF 2019

U/S 366(A) I.P.C & U/S 4 POCSO Act,2012

State of Assam Vs

Md. Munnaf Ali

Appearance

Smti. R.Choudhury	 Special P.P. for the State.
Mr. M, Islam	 Ld. Defence Counsel.
Charge framed on	 29.03.19
Evidence recorded on	 24.07.19
Argument heard on	 07.08.19
Judgment pronounced on	 19.08.19

JUDGMENT

The case for the prosecution in brief is that on 26.08.2018, the informant Md. Ramjan Ali lodged an FIR before the officer in charge of Borghola Police Outpost alleging inter alia that on 23.08.2018, in between 11:00 to 12:00 mid day while his 14 years old daughter was on her way to the house of her relative, the accused person restrained her and taken her by threatening her to a unknown place and rapped her. Hence the case.

- After receiving the said FIR the officer-in-charge of Borghola Outpost make a GDE vide G.D Entry No. 403 dated 26.08.2018, and forwarded the same to the officer in charge of Abhayapuri police Station for registering a case. Accordingly, after receiving the said ejahar, the officer in charge of Abhayapuri police station was pleased to register the same vide Abhayapuri P.S case No. 485 dated 27.08.2018. Police started the investigation of this case and after completion of the investigation, the investigating officer has submitted charge sheet U/S 366(A) I.P.C R/W Sec. 4 POCSO Act,2012
- 3. Accused person appeared before court to face the trial. The copies of all the relevant documents furnished to the accused. After perusing and donsidering all the relevant documents referred to U/S 173 Cr.P.C as well as after considering the submission of Ld. Special P.P and Ld. Counsel for defence finding a prima facie case a formal charge U/S 366(A) I.P.C and a charge u/s 4 POCSO Act,2012 has been framed against the accused person and the same on being read over and explained to the accused person to which accused person pleaded not guilty and claimed to be tried.
- To bring home the charge against the accused person in this case the prosecution side has adduced and examined 2 witnesses including the informant and the victim but defence examined none. After perusing and considering th evidence on record, examination of the accused person u/s 313 CrPC is dispensed with.

5. POINTS FOR DECISIONS

1) Whether the accused person on 23.08.2018, at about 11:00 to 12:00 mid day induced victim to go from any place or to do any act with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person and thereby committed an punishable u/s 366 (A) IPC.

2) Whether the accused person on 23.08.2018 at about 11:00 to 12:00 mid day committed penetrative assault upon the victim and thereby committed an offence punishable u/s 4 of POCSO Act.

6. DECISION AND REASONS FOR DECISION-

I have gone carefully through the entire evidence of the record. I have also heard and considered the argument put forwarded by the Ld Spacial P.P for the State as well as Ld. Counsel for defence.

- 7. In this case the prosecution side has examined the informant Md. Ramjan Ali as PW-1. The prosecution side has also exhibited the FIR vide Ext. 1 and Ext. 1(1) is the signature of PW-1. In course of evidence PW-1 stated that he himself has not written the FIR and did not know the person who has written the FIR. PW-1 further stated that neither he himself read out the contents of the FIR nor the contents of the FIR was read over to him by anyone and hence he did not know what has been written in the FIR. Thus, PW-1 who himself has lodged the FIR being the informant of this case expressed his ignorance about the fact as alleged in the FIR and in my considered view such kind of ignorance about the fact as alleged in the FIR on the part of the informant definitely weaken and reduced the weight, authenticity and credibility of the FIR, which puts the machinery of law into motion as well as upon which, the whole prosecution case is rested upon. Accordingly, on this point benefit goes to defence.
- 8. From the FIR, which was exhibited by the prosecution vide Ext.1, it is revealed that on the date of occurrence as alleged the accused person kidnapped his daughter while the daughter of the informant, the victim was on her way to the house of a relative of the informant and taken her to a unknown place and rapped her, but in course of evidence PW-1 who himself lodged the F.I.R, Ext.1 stated that about one years back his daughter disappeared from his house on the pretext of going to he house of a relative. PW-1 further stated that later on he heard that his daughter has eloped with the accused person. PW-1 in course of cross examination clearly stated that after lodging the FIR he

came to know that his daughter voluntarily on her own will has eloped with the accused person and now a days both of them used to reside peacefully as wife and husband.

- 9. Thus, the evidence of PW-1, who is the father of the victim and the informant of this case appears to be not in conformity with the fact as alleged in the FIR. That apart, PW-1 being the informant of this case also expressed his ignorance about the fact as alleged in the FIR.
- 10. Now, let us discuss, assess and evaluate the evidentiary value of PW-2, the victim. In course of evidence PW-2 stated that there was love affair between her and the accused person and as her parents were not willing to give her marriage with the accused person, hence about one year back she herself voluntarily eloped with the accused person and now a days she used to reside with the accused person as his weeded wife. In course of cross examination PW-2 reiterated the fact that she herself voluntarily eloped with the accused person as per her sweet will and entered into her marriage with the accused. PW-2 clearly stated that before entering marriage with the accused person she never entered into physical relationship with the accused person.
- 11. The above is the threadbare discussion of the evidence on record.
- 12. After perusing and considering the evidence on record and considering the argument put forwarded by the learned counsel for the prosecution as well as defence in its entirety, it appears that in this case the prosecution side has failed to produce any solid and concrete evidence against the accused. In this case, the evidence of P.W.1, who is the informant of this case appears to be not in conformity with the fact as alleged in the FIR. That apart PW-1 who is the informant of this case has also expressed his ignorance about the fact as alleged in the FIR, and such kind of ignorance about the fact as alleged in the FIR, on the part of the informant definitely weaken and reduced the weight and authenticity as well as credibility of the whole prosecution case. That part the prosecution side have also failed to extract any corroboration

or support to build up and establish its case as alleged against the accused person from the evidence of PW-2, the victim, who is the star witness of this case. Again, in this case the prosecution side is totally silent about the intent of the accused person to kidnap the victim as in nowhere it appears that the accused person has taken the victim with a view that she will be forced o seduced to illicit intercourse with another person and not with the accused as alleged, which is the most important ingredient to attract and establish the offence punishable u/s 366(A) IPC as in this case during the course of trial no any witnesses in course of their evidence stated a single line pertaining to the fact and no any circumstances arises from which it can be inferred that the accused have any such intention to kidnap and abduct the victim as provided and required under the penal provision of the law. Even from the evidence the victim and the informant, who is the father of the victim, the prosecution side has totally failed to inspire any support to build up its case as alleged against the accused as from the evidence of victim and the informant, the prosecution side have totally failed either to collect and accumulate any materials or evidence that the accused person in any way compelled the victim to go with the accused person by inducing or enticing the victim, or forced and induced or caused her to illicit intercourse with any other person. After perusing and considering the evidence on record no inference can be drawn from the evidence of any single witness that the accused person is in any way involved in commission of the offence as alleged.

13. In the ultimate analyses on the light of above discussion it appears that in this case the prosecution side has failed to produce any single iota of evidence against the accused person which is sufficient to fasten the accused with the charge as alleged against him beyond all reasonable doubt. Thus, in this case the prosecution has not only failed to operate the switch of the prosecution case for ignition but could not even identify and point out the proper switch of the prosecution on the board itself, hence the court have no any alternative but to acquit the accused person from the charge as levelled against him.

14. I therefore acquit the accused person from the charge levelled against him. I also released the accused person from liability of bail bond and set him at liability.

Given under my hand and seal of this court on this $19^{\,\mathrm{th}}$ day of August, 2019.

Dictated and corrected by me

Special Judge

Special Judge North Salmara, Abhayapuri North Salmara, Abhayapuri

PAGE:7 **APPENDIX**

1. Prosecution Exhibits

Exhibit 1 -

The FIR.

Exhibit 1(1) - The signature of P.W.1.

2. Material Exhibit by prosecution

Nil

3. <u>Defence Exhibits</u>

NIL

4. Prosecution Witnesses

Nil

PW-2

PW-1 - Md. Ramjan Ali, the informant

Musstt. Almina Khatun, the victim

5. <u>Defence Witnesses</u>

NIL

6. Court Witnesses

NIL

Special Judge North Salmara, Abhayapuri