## IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Spl. Sessions (P) case No.56/2018

U/S-366 (A) IPC R/W section 4 of the POCSO Act

State of Assam

-Versus-

Md. Ajgar Ali

s/o- Lt. Hazrat Ali

Resident of vill –No.3 Tupamoni

P.S.-Nagarbera

Dist- Kamrup, Assam

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor

-----for the State

Hiyamani Das, Advocate

-----for the accused

Date of evidence: 14.02.2019, 13.03.2019, 09.04.2019 and 27.05.2019

Date of Argument:01.06.2019

Date of Judgment:01.06.2019

## JUDGMENT

- The Prosecution case, briefly narrating is that on 17.03.2018 the complainant

   Saheb Ali lodged an ejahar alleging that on 15.03.2018 at about 8.00 p.m, his minor daughter went missing from house when she went to answer her natural call.
   Later, it was heard that she was kidnapped by the accused person— Md. Ajgar Ali. Hence, this case.
- On the basis of the said ejahar, Nagarbera P.S Case No. 38/18 U/S-364 (A) IPC R/w section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-366 of IPC.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 366 (A) IPC R/W Section 4 of the POCSO Act, 2012 against accused— Md. Ajgar Ali. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 5 (five) witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating material against him.

#### 5. POINT FOR DETERMINATION

- (I) Whether the accused person on 15.03.2018 at about 8.00 p.m induced the complainant's minor daughter to go from any place or to do any act with the 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 offence punishable U/S 366 (A) IPC?
- (II) Whether the accused person on the same date and time committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012 ?

## **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined 5 (five) witnesses.
- 7. P.W.1, Md Saheb Ali is the informant. Prosecutrix is his daughter. Accused is his neighbour. He stated that the incident took place 10 months ago at 8/9.00 pm. At the relevant time , prosecutrix was 13 years old. Pw-1 was in the market when the incident took place. When he returned from the market he did not find the prosecutrix at home. Then, his wife –Jahiran Nessa told him that the prosecutrix went to the latrine outside the house but did not return back. They searched for her but she was untraceable. Later, pw-1 heard that prosecutrix was recovered by Nagerbera Police. Thereafter, he lodged the ejahar. Ext-1 is the ejahar and Ext-1 (1) is his signature. On enquiry, prosecutrix told him that she had gone for roaming with the accused to his relatives place at Naitor, Jamlai under Nagerbera P.S. In his cross-examination, pw-1 disclosed that the accused did not forcibly take away the prosecutrix with him and he did not do anything with her. He also disclosed that the ejahar was given out of some misunderstanding.
- 8. P.W.2, is the prosecutrix . She stated that the accused is her neighbour and they were having love affairs but her family members were unaware of the affair. Pw-2 disclosed that on the night of occurance at 8 pm , she went with the accused for roaming . They visited his relatives place at Naitor, Jamlai under Nagerbera P.S And stayed their for one day. This witness revealed that she and the accused did not stay together in one room. Police recovered her from Jamlai and brought her to the police-station. Thereafter, her father (pw-1) lodged the ejahar out of misunderstanding. Police sent her for medical examination and brought her before the Magistrate for recording her statement . Ext- 2 is the statement and Ext-2 (1) is her signature. Pw-2 disclosed that she gave her statement before the Magistrate and police as tutored by the village people. In her cross-examination, pw-2 revealed that the accused did not do any bad act with her . She went for roaming with the accused on her own will.

- 9. Pw-3 Mustt Hasina Khatun knew nothing about the incident. On the date of occurrence she had gone to visit her sister's house.
- 10. Pw-4 Dr Reshma Talukdar is the M.O, who examined the prosecutrix. On 18.03.2018 he was working as a Medical Officer, Department of Forensic Medicine at GMCH. On that day, he examined at around 12.30 p.m one, Smti Sahara Khatun, female, 12 years of age brought in reference to Nagarbera P.S case No. 38/18 U/S-363of IPC. She was accompanied and identified by WHG SabitaThakuria. The victim alleged before her that on 15.03.2018, the accused—Ajgar Ali forcefully take her away from her residence and kept her in his sister's house for two days and he had committed forceful sexual intercourse with her.

On the physical examination of the victim found---

Her height—154 cm, weight—35 kg, chest girth—81 cm, abdominal girth—70 cm, total 28 teeth were present and all were permanent. Scalp hair-36 cm, black in colour. Axillary hair-scanty 1-2 cm, black in colour. Pubic hair— 4c.m, black in colour. Her breast—hemispherical, areola and nipple brown in colour. Menarche—attained this year.

### On genital examination:-

Genital organs—well Developed, healthy, vulva—labia majoraand labia minora exposed on abduction of legs, Hymen –old tear present at 7, 9, 2, 4 o' clock position, vagina—rugocity present, Cervix—healthy, Uterus—not palpable, evidence of venereal disease –not detected at the time of examination, injury on the body—not detected at the time of examination, her mental condition at the time of examination—Normal, behavior—Co-operative and average, gait—Normal.

## <u>Laboratory investigation:-</u>

Vaginal smears does not show any presence of spermatozoa or gonococcus.

<u>Opinion:</u> On the basis of physical examination, radiological and laboratory investigations done, P.W.5 opined that:-

- There is no evidence of recent sexual intercourse.
- 2. As described.

3. The actual age is above 14 years and below 16 years of age and she is a minor.

Ext.3 is the medical report. Ext.3 (1 to 3) are my signatures. She did not find any evidence of recent sexual intercourse on examining the prosecutrix.

- 11. P.W.5, S/I Sanjeeb Kr. Deb is the Investigating officer of this case. He deposed in his evidence that on 17.03.2018, he was serving as O/C Nagarbera P.S. On that day upon receiving an ejahar lodged by one Md. Saheb Ali, he registered a case being Nagarbera P.S Case No.38/2018 U/S-366 A IPC. Thereafter, he visited the place of occurrence along with other staffs and he recorded the statement of informant and other witnesses including the victim girl. P.W.5 also prepared the sketch map. Ext.4 is the sketch-map and Ext. 4(1) is his signature. Next day, he arrested the accused—Ajgar Ali and produced him before the court. P.W.5 send the victim for her medical examination. He also sent the victim to the Court for getting her statement recorded U/S-164 Cr. P.C before the Magistrate. Thereafter, he completed the investigation and on finding sufficient materials against the accused, P.W.5 submitted charge sheet against the accused U/S-364 A of IPC R/W Section 4 of POCSO Act, 2012. Ext.5 is the charge-sheet and Ext. 5 (1) is his signature. P.W.5 further disclosed that the delay in lodging the ejahar is not explained therein in the ejahar i.e Ext.1.
- 12. Therefore, from the evidence of the victim girl (P.W.2) it is clear that she had love affairs with the accused and on the date of occurrence she went with him for roaming on her own will. It is revealed by the victim that she was not taken away forcibly by the accused on the date of incident. She went with him on her own sweet will out of love affairs between them and no any bad act was done upon her by the accused person. P.W.1 also supported the version of P.W.2. He made it clear that the ejahar was given against the accused person due to misunderstanding. The evidences of both the witnesses have corroborated with each other. So, the accused is not implicated by the victim and the informant in any manner.
- 12. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Md. Ajgar Ali is held not guilty and he is acquitted of the offence U/S-366 (A) of IPC R/W

section 4 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.

- 13. The case is disposed of.
- 14. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 01st day of June, 2019.

Special Judge, Kamrup, Amingaon

## **APPENDIX**

# **Prosecution Witness:**

P.W.1, Md Saheb Ali

P.W.2, is the prosecutrix

Pw-3 Mustt Hasina Khatun

Pw-4 Dr Reshma Talukdar

P.W.5, S/I Sanjeeb Kr. Deb

# **Prosecution Exhibit**

Ext.1 is the FIR

Ext.2 is the Statement of the victim recorded U/S-164 Cr. P.C.

Ext.3 is the medical report

Ext.4 is the sketch-map

Ext.5 is the charge-sheet

Special Judge,

Kamrup, Amingaon