IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) No. 19/2018. Under Section 120-B/366-A/506 IPC R/W Section 6 of POCSO Act.

State of Assam

-Vs-

- 1. Samsul Hoque
- 2. Jahan Ali.....Accused persons.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused: Mr. Dwijen Kr. Boro & Mr. P. Lomga, Learned Advocates.

Date of Evidence : 11-10-18: 27-11-18: 10-01-19: 15-02-19:

28-03-19: 31-05-19.

Date of Arguments: 10-07-2019.

Date of Judgment: 24-07-2019.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 13-06-16, in the night, at about 07 pm, the victim went to the house of accused Samsul Hoque to fetch water. While she was returning home with the pot and bucket filled with water, on the road the accused persons caught her from behind, muffled her mouth with cloth, showed dagger to her threatening to kill her and took her to the backyard of accused Samsul Hoque and kept her under a Jackfruit tree.

Thereafter, both the accused persons committed rape upon her. In the morning, they released her and then she returned back to her home. Thereafter, on 15-06-16, the victim lodged an FIR with the In-charge of Lalpool Out Post. On the basis of the FIR, Rowta PS Case No. 72/16, U/S 120-B/366-A/506 IPC R/W Section 06 of POCSO Act was registered. After completion of investigation Police submitted charge-sheet U/S 120-B/366/506 IPC R/W Section 06 of POCSO Act against the accused persons Samsul Hoque and Jahan Ali.

- 2. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offences under Section 120-B/366-A/506 IPC R/W Section 06 of POCSO Act, learned Special Judge framed charges there under and the ingredients of charges under Section 120-B/366-A/506 IPC R/W Section 06 of POCSO Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 15-06-19, transferred the case to this court for disposal.
- 3. The prosecution in order to prove its case examined the following 06(six) witnesses:

PW1- Dr. Bhagirath Dey.

PW2- Kali Mulla.

PW3- Abdul Awal.

PW4- Sultan Ali.

PW5- Victim-A.

PW6- S.I. Dimberswar Deka.

4. The statement of the accused persons had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.

- 5. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused persons agreed to do criminal conspiracy?
 - (II) Whether the accused persons kidnapped the victim-A, a girl under 18 years of age, with intent that she may be forced to illicit intercourse with them?
 - (III) Whether the accused persons committed criminal intimidation by threatening victim-A with threat to kill her committed illicit intercourse with her?
 - (IV) Whether the accused persons committed aggravated penetrative sexual assault upon Victim-A, aged about 13 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 6. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. Diwjen Kr. Boro and Mr. P. Lomga.
- Learned counsel for the prosecution has submitted that prosecution has proved the case beyond all reasonable doubt that on the date of occurrence the accused persons had committed sexual intercourse with her against her will.
- 8. Per contra learned defence counsel as submitted that PW2 who is brother of the victim has not adduced evidence supporting the prosecution case. PW3 also did not support the prosecution case. According to PW3 victim eloped with someone. The evidence of father and brother of the victim is inconsistent with regard to the place of occurrence from where the victim was brought to home. According to the victim after the incident she went to the house of her friend and later on informed her sister-in-law about the incident. But both the sister-in-law and friend of the victim have not been examined in the instant case which raised a reasonable doubt as to the prosecution case. he has further argued that as per the contents of the FIR, in the morning, the victim

herself came back to her home whereas as per the evidence adduced by the prosecution after the incident she was brought back to home by her brother. Hence, the prosecution as failed to prove the charges leveled against the accused persons beyond all reasonable doubt.

- 9. Before appreciating the argument put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is Dr. Bhagirath Dey. In his evidence PW1 had deposed that on 16.6.16, he examined victim-A at Udalguri Civil Hospital and on examination, he found the following:-
 - No sign of injury in vagina but scratch over breast present, pregnancy test negative, USA is negative for pregnancy, age of the victim is 16-17(sixteen-seventeen) years and no definite sign of rape present. Ext.1 is the medical report. Ext.1(1) is the signature of PW1. In cross-examination, PW1 had stated that he had not mentioned the age of injury in his report.
- 11. PW2 is Kali Mulla, brother of victim-A. In his evidence PW2 had deposed that the occurrence took place in the year 2016 at around 8-9 PM. At that time when he was at home the wife of Jahan Ali shouted that she had seen ghost. The house of the accused Jahan Ali and Samsul Hoque is contiguous to their house. On hearing the shout of seeing a ghost his sister had already came out from his house and many village people came out of their house. Later he also came out of his house. But he could not see any ghost. So he came back to his home and went to sleep. As the occurrence took place in the Ramjan month so he woke up in the morning to have their meal but at that time his sister was found missing. They made search about her whereabouts, but she could not be found till in the morning. On the next day while his sister did not return he went to a nearby shop at about 12 O Clock in the noon and when he returned from shop he saw his sister sitting in front of the house of the father-in-law of the accused. Then he took his sister to their home. On being

- enquired as to her whereabouts in the previous night she did not disclose anything. Cross-examination of PW2 had been declined by the defence.
- 12. PW3 is Abdul Awal. In his evidence PW3 had deposed that the occurrence took place about 2 years back. At the material time when he was at home, he came to know from the village people that the victim eloped away with someone from her house. Except this he knew nothing about the incident. In cross-examination, PW3 had stated that he did not know as to with whom the victim eloped away on the date of occurrence.
- 13. PW4 is Sultan Ali, father of the victim-A. In his evidence PW4 had deposed that the occurrence took place about two years ago at around 7 PM. At the time of occurrence he was away from home. After returning his home he did not find her daughter. She did not return till late in the night and they also could not locate about her whereabouts in spite of their vigorous search in different places. On the next day his son Kalimullah found his daughter sitting at the house of accused Samsul and his son brought her to their home. When he asked her daughter as to where she was on the previous night she told that on the previous day on the night when she went out to answer her call of nature then the accused Samsul and Jahan Ali who were waiting outside forcefully took her away to their house and committed rape on her. After coming to know about the incident they placed the matter before the village elderly persons and accordingly a meeting was held but the accused persons did not turn up in the meeting. Having found no alternative his daughter lodged an FIR before the police against the accused persons. PW4 had deposed that his daughter was 13 years old at the time of the commission of the offence. In cross-examination PW4 had stated that his house is adjacent to the house of accused persons. He had stated that when they did not find the victim they made search in nearby places including the house of accused Samsul but they could not trace her whereabouts. When he came to the house of accused Samsul his family members were present but he was not found. When his daughter was found missing they informed the village Gaon

Burah on the next day in the afternoon. PW4 had stated that at the material time he used to carry water from the tube well of the accused Samsul on regular basis. At that time accused Samsul told PW4 to repair their own tube well instead of coming to accused house for taking water from his tube well. PW4 had denied the suggestion that as accused Samsul asked him to repair his own tube well for arranging water without visiting his house and at this he felt humiliated and as such told Samsul that he would be implicated in a false case for taking revenge.

14. PW5 is Victim-A, informant of the case. In her evidence PW5 had deposed that the occurrence took place in the month of June, 2016 at about 7 PM. On the day of occurrence she went to the house of Samsul to fetch water. At that moment Samsul came from behind and caught hold of her and gagged her mouth with a cloth. Thereafter, Samsul dragged her to the back side of the house of accused Jahan Ali and handed over her to Jahan Ali. Then accused Jahan Ali committed rape on her under a Jackfruit tree behind his house. Thereafter, Jahan Ali released her. After commission of rape she went to the house of her friend Khusnara Begum and stayed for the night in her house. On the following day in the noon her brother Kalimulla brought her from the house of her friend. After returning home PW5 narrated about the incident to her sister-in-law Jahida Begum. With regard to the incident her father convened a village meeting but nothing could be resolved in that meeting and, as such, with the help of her father PW5 lodged the FIR with the police. Police sent her for medical examination and got her statement recorded before the Magistrate U/S 164 Cr.P.C. Ext.2 is the statement U/S 164 Cr.P.C. Ext.2(1) and 2(2) are the signatures of PW5. Ext.3 is the FIR wherein Ext.3(1) is the signature of PW5. PW5 had deposed that at the time of occurrence she was 13 years old. In cross-examination, PW5 had stated that she did not remember her date of birth. The houses of Ainul Hoque and Abdul Awal etc. are situated near the place of occurrence. Neighbouring people of the place of occurrence came to know after commission of the incident. Since before one week of the incident their tube well was run down so, she fetched water from

the tube well of accused Samsul's house which is adjacent to their house. At the time of occurrence Samsul was alongwith his wife and two children. PW5 had denied the suggestions put forward by the defence.

15. PW6 SI Dimbeswar Deka is the Investigating Officer of the case. In his evidence PW6 had deposed that on 15-16-16 he was posted as attached officer at Lalpool Out Post. On the basis of the FIR lodged by the informant, OC Rowta PS registered the Rowta PS case No. 72/16 U/S 120(b)/366(A)/506; R/W sec 6 of POCSO Act. PW6 was entrusted by the IC Lalpool OP for the investigation of the case. In course of the investigation of the case PW6 visited the place of occurrence, prepared the sketch map thereof, recorded the statement of the informant and available witnesses U/S 161 CrPC. PW6 also visited the house of accused but did not find the accused persons. The victim was sent for medical examination and collected the medical report. The victim was also sent for her statement to be recorded U/S 164 CrPC before the magistrate and her statement was got recorded accordingly. In the midst of the investigation he was transferred and as such he handed over the case diary to the IC Lalpool OP for the needful action of the same. Later the case was investigated by his successor SI Faruque Ahmed and he arrested the accused persons and on completion of the investigation of the case charge sheet was laid against the accused persons U/S 120(b)/366(A)/506; R/W Sec 6 of POCSO Act. PW6 knew the signature and handwriting of S.I Faruk Ahmed with whom he worked together. Ext 4 is the GD entry. Ext. 4(1) is the signature of PW6. Ext. 5 is the sketch map wherein Ext. 5(1) is the signature of PW6. Ext. 6 is the charge sheet. Ext 6(1) is the signature of S.I. Faruque Ahmed which is known to PW6. In cross-examination, PW6 had stated that the incident occurred on 13-06-16 and the FIR was lodged on 15-06-16. On 15-06-16 he recorded the statements of Sultan Ali, Kalimulla, Victim and Abdul Awad. PW 5, victim-A had not stated before him that on the date of occurrence at around 7 PM when she went to fetch water from the tube well of accused Samsul Hoque at that time he suddenly caught hold of her and dragged her towards back of the house of Jahan Ali and handed over her to Jahan Ali and he committed rape on her. PW 5 had also not stated before him that after commission of rape by the accused Jahan Ali she went to the house of Khusnara Begum and stayed with her for the night and on the following day in the noon her brother brought her from the house of her friend Khusnara.

16. On appraisement of the evidence on record it appears that according to PW5, the victim of the instant case, the incident happened at about 07 pm. At that time while she went to the house of accused Samsul Hoque to fetch water accused Samsul Hoque caught her from behind, gagged her mouth with a cloth and dragged her to the backside of the house of accused Jahan Ali and handed over to accused Jahan Ali. Thereafter, the accused Jahan Ali committed rape on her under the Jackfruit tree behind his house. The houses of the accused persons are situated adjacent to the house of the victim girl. According to the victim, after the incident, she went to the house of her friend Khusnara Begum and spent the night in her friend's house. There is no reasonable explanation on the part of the victim as to why immediately after the incident she did not return back to her own home which is near the place of occurrence. PW4, the father of the victim had deposed that while the victim was not found at home till late in the night vigorous search was made to locate the whereabouts of the victim in different places, but they were unable to trace her out. Thus, if the victim was in her friend's house which is situated in her village a reasonable question arises as to why her family members failed to find her out. Moreover, PW2, the brother of the victim has not deposed anything in support of the prosecution case. He has not deposed anything with regard to the allege incident of rape committed upon his sister. His evidence is only to the effect that on the date of occurrence in the night the victim was found missing from home and next day at 12 O' Clock in the noon, he found his sister sitting in front of the house of the father-in-law of the accused. Thus, nothing could be gathered from the evidence of PW2 to establish the charges leveled against the accused persons. PW3, the only independent witness of the instant case has also not adduced evidence supporting the prosecution case. The evidence of PW3 that he had heard from the villagers that at the time of incident the victim eloped with someone from her house has not relevancy with the prosecution case.

- 17. The evidence of PW4 and PW2 are also not consistent with regard to the place from where the victim was brought to her home after the incident. While PW2, the brother of the victim had deposed that he brought his sister from in front of the house of the father-in-law of the accused where she was found sitting. Whereas according to PW4 his son PW2 found the victim sitting in the house of accused Samsul and he brought her from there. The evidence of the victim is also inconsistent with the evidence of PW4 and PW2. According to her PW2 brought her from the house of her friend Khusnara Begum. Moreover, prosecution has failed to prove the material witness Khusnara Begum who is the friend of the victim and to whose house the victim went after the incident.
- 18. In the instant case the father of the victim had deposed that elderly persons of village were informed about the incident and accordingly a meeting was held where the accused persons did not turn up. However, prosecution has failed to examine any person of the village to establish the factum of holding of a meeting with regard to the incident.
- 19. The medical evidence revealed presence of scratch over breast of the victim, but the victim did not depose about the receiving of any such injuries during the time of alleged incident. Moreover, medical evidence has not disclosed the age of the injury found on the breast of the victim. Therefore, from such a report it is not possible to determine conclusively that the injury found over the breast of the victim as a result of sexual assault upon her.
- 20. It is settled position of law that in an incident of rape the sole testimony of victim is sufficient to convict the accused and corroboration is not required if the evidence of the victim is found to be inspiring confidence and worthy of

credence. In the instant case on appraisement of the evidence of the victim it is found that conduct of the victim to visit her friend's home after the alleged incident of rape instead of coming back to her own home which is nearby the place of occurrence and not informing her family members immediately about the incident, is not natural. She has failed to give any explanation as to why she did not return back to her home after the incident and not informed her family members immediately about the incident. The evidence of the victim is suffered from inherent improbabilities and as such not inspiring confidence.

- 21. In view of above discussion it appears that the prosecution has failed to establish the charges under Section 120-B/366-A/506 IPC R/W Section 06 of POCSO Act against the accused persons beyond all reasonable doubt.
- 22. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

- 23. In the result, the accused persons Samsul Hoque and Jahan Ali are found not guilty under Section 120-B/366-A/506 IPC R/W Section 06 of POCSO Act and acquitted of charges under Section 120-B/366-A/506 IPC R/W Section 06 of POCSO Act and set with liberty forthwith.
- 24. Bail bond executed by the accused persons Samsul Hoque and Jahan Ali and the sureties shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

25. Judgment is signed, delivered and pronounced in the open court today the 24^{th} day of July, 2019.

Dictated and Corrected

(N.Talukdar) Addl. Sessions Judge Udalguri (N.Talukdar) Addl. Sessions Judge Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

Special (POCSO) 19/2018 APPENDIX

(A) Prosecution Exhibits:

Ext.-1: Medical report.

Ext.-2: Statement of the victim-A U/S 164 Cr.P.C.

Ext.-3: FIR.

Ext.-4: GD entry.

Ext.-5: Sketch map.

Ext.-6: Charge sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Bhagirath Dey.

PW2- Kali Mulla.

PW3- Abdul Awal.

PW4- Sultan Ali.

PW5- Victim-A.

PW6- S.I. Dimberswar Deka.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)

Addl. Sessions Judge.

Udalguri.