IN THE COURT OF THE SPECIAL JUDGE ::::::::::::: HAILAKANDI

Special (POCSO) Case No. 16/2019.

U/S - 341/323/376 of the IPC read with Sec. 4 & 6 of POCSO Act

State of Assam

- Versus -

Dilwar Hussain

...... 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 K.U. Laskar, Ld. Advocate.

Date of recording evidence

:- 13.09.2019.

Date of recording statement u/s 313, CrPC :- 21.09.2019.

Date of Argument

:- 21.09.2019.

Date of Judgment

:- 21.09.2019.

JUDGMENT

The prosecution case, in brief, is that on 25.03.2019 the informant Sri Milan Sen Tripura lodged an ejahar with the O/c, Ramnathpur Police Station alleging that on 24.03.2019 at about 10.30 AM while his minor daughter, the victim was returning home from Garmurah Bazar after attending her private tuition, on the way (near Choraibak Railway), the accused person Dilwar Hussain appeared there and forcefully dragged the victim to the nearby wood and committed rape on her and made her senseless and after regaining sense, somehow the victim went to the house and narrated the incident to them.

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- 2. On receipt of the ejahar, the same was registered as Ramnathpur Police Station Case No. 29/2019 under Sec. 341/323/376 of the IPC read with Sec. 4/6 of the POCSO Act and accordingly, police started investigation of the case. During investigation, police visited the place of occurrence, drew up rough sketch map thereof, 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 Dilwar Hussain under Sec. 341/323/376, IPC read with Sec. 4/6 of the POCSO Act,2012.
- 3. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. 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 Dilwar Hussain under Sec. 341/323/376/ of the IPC read with Sec. 4 & 6 of the POCSO Act, 2012. 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.
- In the instant case, the prosecution has examined the victim and her father, the informant. 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.
- Heard argument of both sides. Perused the record.

7. POINTS FOR DETERMINATION :-

(i) Whether the accused person on 24.03.2019 at about 10.30 AM at village Charaibak under Ramnathpur PS wrongfully

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restrained the victim, the minor daughter of the informant, and thereby the accused has committed the offence punishable under sec. 341, IPC?

(ii) Whether the accused person after restraining the victim, voluntarily caused hurt to her and thereby the accused has committed the offence punishable under Sec. 323, IPC?

(iii) Whether the accused person committed rape on the victim and thereby, the accused has committed the offence punishable under Sec. 376, IPC?

(iv)Whether the accused person committed penetrative sexual assault on the victim and thereby, the accused has committed the offence punishable under Sec. 4 of the POCSO Act, 2012?

(v)Whether the accused person committed aggravated sexual assault on the victim and thereby, the accused has committed the offence punishable under Sec. 6 of the POCSO Act, 2012?

DISCUSSION, REASONS AND DECISION THEREOF:

such, to ascertain her understanding ability, some question were put to her and accordingly, she gave rational answers very confidently and thereafter, her evidence was recorded. In her evidence, the victim (PW.1) has stated that on 24.3.2019 while she was returning home from tuition at Garmurah, on the way, one person gagged her mouth and forcefully took her inside nearby jungle and committed rape on her. It is also her evidence that she could not recognize the person as he was wearing mask in his face and her father lodged the case. It is further stated by the victim that during investigation, police got her medically examined and her statement was recorded by the Magistrate vide Ext. 1.

In cross examination, the victim has deposed that the contents of the FIR were not read over to her and she made her statement before the Magistrate likewise as instructed by her father. Contd......P/4.

SPECIAD JUDGE HAILAKANDI g. The PW. 2, the informant Sri Milan Sen Tripura has deposed that on 24.03.2019 at about 11 AM his daughter i.e. the victim returned home from her tuition and then, the victim reported him that someone committed bad acts on her but she could not recognize the person as his face was covered by black cloth and thereafter, when the informant came to know from the villagers that the relevant time, the accused Dilwar was proceeding through the same route near the place of occurrence, on suspect he made him accused in the FIR, Ext. 2.

In cross examination, the informant has stated that his daughter could not recognize the person and on suspect, he mentioned the name of the accused in the FIR.

- In the instant case, the most important witness is the 10. victim and the fate of the entire case rests upon her evidence. The evidence of the victim discloses that at the relevant time she was going to her house after attending tuition at Garmurah and on the way, one person gagged her mouth and forcefully took her to the nearby jungle and committed rape on her but she could not recognize the said person as he was wearing a mask in his face. In her cross examination, the victim has stated that the contents of the FIR were not read over to her and she made her statement before the Magistrate likewise as instructed by her father. Since the victim herself could not identify the miscreant who committed rape on her and the father of the victim lodged the FIR merely on suspect against the accused and also taking into consideration the fact that the victim made her statement before Magistrate on being influenced by her father, in my considered opinion, it would not be wise to entangle the accused in the commission of the crime alleged.
- In view of above discussion, it is held that the prosecution has failed to prove its case against the accused person in any manner and hence, the accused person Dilwar Hussain is acquitted of the offence under Sec. 341/323/376 of the IPC read with Sec. 4 & 6 of the POCSO Act. Set him at liberty forthwith.

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12. The bail bond of the accused person stands discharged.

13. The Special (POCSO) case is disposed of accordingly.

The Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 21st day of September, 2019.

Special Judge, Hailakandi.

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Dictation is taken and transcribed by Baharul Islam Choudhury,

Stenographer Grade I.

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Appendix:-

Oral evidences :-

PW. 1, the Victim &

PW. 2, Milan Sen Tripura.

Documentary evidences :-

Ext. 1- Statement of the victim under Sec. 164, CrPC. &

Ext. 2- FIR.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

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