IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 3 of 2014 U/S 366/344 IPC, R/W Section 6 of POCSO Act. (Arising out of Mathurapur P.S. Case No. 132/2013)

State of Assam

-Vs-

Sri Manglu Chetry Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, PP, Sivasagar. For the accused : Sri B.B. Lohar, Advocate

Date of framing Charge : 29.08.2014

Dates of Evidence : 26.09.2014, 20.11.2014, 23.04.2015,

29.05.2015, 08.02.2017

 Date of S/D
 : 30.03.2017

 Date of Argument
 : 25.10.2017

 Date of Judgment
 : 07.11.2017

<u>JUDGMEN</u>T

1. Prosecution case, in brief, is that on 29.11.2013, one Sri Dipak Guwalla lodged a complaint before learned Sub-Divisional Judicial Magistrate, Charaideo at Sonari stating that on 23.09.2013 while his minor daughter, victim 'J' (name withheld) was going to school, accused Monglu Rajput kidnapped her by inducing the said victim and kept her confined from 23.09.2013 to 10.11.2013 and committed rape and also physically assaulted her causing injuries. It is further stated that immediately after the kidnap, he informed the matter to Mathurapur Police Station, but the VDP has assured him for recovery of his daughter through village meeting and for this the case was not registered by the said Mathurapur P.S. However said VDP has failed to bring back the

daughter of the informant and lastly on 11.11.2013, at about 9.30 A.M. the victim flew away from the house of the accused and arrived at the residence of the informant. The informant also suspects that his minor daughter was pregnant.

- 2. On receipt of the complaint, same was forwarded to Mathurapur P.S. for registering a case and to investigate. Accordingly Mathurapur P.S. Case No.132/2013, U/S 366(A)/344/323 IPC, R/W Section 5 (J)(II)(m) of POCSO Act was registered and investigated into the case. During investigation, I.O. visited the place of occurrence and recorded the statement of the witnesses. During investigation, accused was arrested and the victim was produced before the learned JMFC, Charaideo, Sonari for recording her statement U/S 164 Cr.P.C. and also got her medically examined. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 366/376 IPC.
- 3. After furnishing copy to the accused person, vide order dated 29.08.2014, the the presiding judge charge U/S 366/344 IPC, R/W Section 6 of POCSO Act, 2012 has been framed against accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined as many as ten witnesses including the M.O. and I.O.
- 4. Upon completion of the prosecution evidence, accused was examined u/s 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.
- 5. I have heard argument of learned PP Mr. A.K. Bora and Mr. B.B. Lohar, learned defence counsel and gone through the evidence and documents.
- In the course of argument hearing, learned P.P. has submitted that from the evidence of P.W. 1, the victim, it appears that she has categorically mentioned about her kidnap, wrongful confinement and commission of rape by the accused against her will. As such her evidence is found reliable. On the other hand, learned Advocate for the accused has vehemently argued that though the informant and the victim has claimed the

age of the victim below 18 years, but from the evidence of P.W. 5, the M.O. it appears that a clear finding was given that the victim 'J' was above the age of 18 years and below the age of 25 years. Prosecution has not brought any other materials to override this evidence on age, particularly school document though admittedly the victim was a student of Class-VIII at that time. It is also argued that from the evidence of P.W. 1 to P.W. 3 it is clear that, victim on her own went to the accused and stayed with him as his wife and subsequently she left the house of the accused. It is further argued that the allegations of kidnap or wrongful confinement or rape are not proved and the evidence of P.W. 1 alone cannot be relied upon due to non-corroboration from the evidence of P.W. 2 and P.W. 3 or any other witnesses. It is also argued that admittedly a village meeting was convened to settle the dispute fully knowing where about of the victim and the accused and hence there cannot be any wrongful confinement. I have considered the submission of both the sides.

7. POINTS FOR DETERMINATION ARE -

- (i) What was the age of the victim on the date of incident, i.e. on 23.09.2013?
- (ii) Whether on 23.09.2013 accused kidnapped the victim with an intention to compel her to marry or for seducing illicit intercourse?
- (iii) Whether the accused has wrongfully confined the victim for about 49 days?
- (iv) Whether the victim was subjected to penetrative sexual assault by the accused against her will? If so, whether accused has committed offence of penetrative sexual assault?

DECISION AND REASONS THEREOF -

PW 1 the victim in her evidence deposed that she was a student of class IX and on 23.09.2013 she went to school, but due to her late arrival she had to return home. While she was returning home, she meet with Monki Rajput, sister of the accused who took her to Dol Bagan to her sister's residence and thereafter Monki left the house. In the evening, accused came and forcibly took her and kept her for 3 days and also assured to marry her.

Accused has compelled her to sleep with him and committed sexual intercourse with her. She further deposed that accused committed sexual intercourse with her by using force at Dol Bagan for 3 days. He did not allow her to return for about 1 month and 18 days. Her residence is at a distance of about 2 miles from the said place. Thereafter, on 11.11.2013, she managed to flee away and returned home. Her parents did not visit there. Her brothers and some other persons went to bring her but the accused did not allow her to go with them. Thereafter, on returning home she informed the incident to her mother and on this one police case was lodged. Police got her medically examined and also recorded her statement in the court. Ext. 1 is her statement. Accused forced her to perform marriage. In her cross examination, she denied that her father went to the residence of Monglu for searching her but she refused to return. She denied that at the time of incident, she was a student and aged about 18 years. She and Monglu clicked joint photo graph. She denied that she eloped with the accused on her own.

- 9. PW 2 Sri Dipak Gowala, the father of the victim, in his evidence deposed that due to non-returning of his daughter from school, he lodged the FIR. At the time of occurrence, his daughter was aged about 14 years. After about one and half months, police recovered her. He field the FIR on 26.03.2013. Ext. 2 is the FIR, which was written by the VDP Secretary. However as the said FIR was not registered, he again submitted a court case. Thereafter, his daughter flew away from the house of the accused and informed him that accused took her to Dol Bagan and after keeping her there for few days she was taken to Monglu's house. He proved the complaint as Ext. 3. In his cross examination, he stated that he lodged the FIR at Charaideo Court on 29.11.2013. He denied that no investigation was made on Ext. 2. During investigation, he stated before police that his daughter eloped with Monglu. He denied that his daughter went on her own with Monglu.
- 10. PW 3 Smti Dipti Gogoi in her evidence deposed that in the year of 2013, victim 'J' was missing from her school and after 3 days, she was found at the residence of the accused. Thereafter a meeting was held but no decision Spl. (P) Case No. 3/2014 Page 4 of 9

was taken. At the time of elopement, victim was a student of Class-IX and aged about 14 years. On asking, victim stated that on her own she came out from her house. After staying about 2 months in the residence of Monglu, she returned home. In her cross examination, she deposed that father of the victim stated that no resolution in the meeting was required as her daughter went on her own. She stated the age of the victim by seeing the appearance of the victim.

- 11. PW 4 Sri Radha Kandha Choudhuri in his evidence deposed that on the matter of missing of the victim on 23.09.14, Dipak Gowala, the father of the victim went to Mathurapur PS on 26.09.14 and lodged an FIR regarding missing of the victim. The FIR was written by him. After searching for his daughter about one week, Dipak Gowala got his daughter at Police Station. He came to know that Monglu has taken the victim. The victim was a student of class IX and aged about 14 years. Dipak did not tell him that the victim eloped with Monglu.
- 12. PW 5 Dr. B.K. Bhuyan, the M.O. of this case in his evidence deposed that on 06.12.2013 he examined the victim 'J' in connection with the Mathurapur PS Case No. 132/13. The patient gave the brief history as alleged sexual assault on 23.09.13 to 11.11.2013. Upon examination, he opined that victim is not pregnant at the time of examination. He stated that she does not have any sign of recent sexual intercourse at the time of examination. The M.O. further opined that her age is above 18 years and below 25 years at the time of examination. He proved his report as Ext. 4.
- 13. PW 6 Sri Prahalad Khudal in his evidence deposed that a meeting was organized due to taking of victim 'J' by accused Monglu but people did not gather in the meeting.
- 14. PW 7 Sri Jadu Gogoi, PW 8 Sri Paresh Khudal and PW 9 Sri Haresh Rajput in their evidence deposed that they have no knowledge about the incident of this case.
- 15. PW 10 Sri Tribhuban Saikia, the I.O. of this case in his evidence Spl. (P) Case No. 3/2014 Page 5 of 9

deposed that he has investigated Mathurapur PS Case No. 132/13. He also prepared the sketch map of the place of occurrence vide Ext. 5. He deposed that he has not seized any school document to prove the age of the victim. After completion of investigation, he submitted charge sheet against the accused Monglu Rajput u/s 366/376 IPC vide Ext. 6. In his cross examination he admitted that as per the medico legal report the age of the victim is above 18 years.

- 16. Point No. I: From the materials on record, particularly from the evidence of PW 1, PW 2 and PW 3, it appears that they have claimed the age of the victim as 14 years and that victim was a student of Class-VIII at the relevant time. In cross-examination the victim has admitted that she failed in her school examination for twice. In support of the above evidence neither the I.O. collected any school document nor the prosecution has produced any relevant document of age. Defence has challenged the age of the victim. PW 5 the Medical Officer in his report (Exbt. 4) has opined that upon Radiological examination of the victim he is of the opinion that victim is above the age of 18 years, but below the age of 25 years. This part of the evidence was led by prosecution. As such from the prosecution evidence, it appears that there are two sets of evidence on the age of the victim. Law is well settled that where two views are possible, it will always goes in favour of the accused. In the present case in hand, it appears that the victim was a school going student, but prosecution has not made any attempt to override the medical opinion by proving documentary evidence. As such, I have no option but to hold that at the relevant time the victim was aged above 18 years.
- 17. Points No. II, III & IV: On perusal of the evidence as narrated above, it appears that while victim was returning from school she was taken by one Smt. Manki Rajput, the elder sister of the accused and after her arrival at the residence of the elder sister of the accused, said Manki Rajput left her. As such, from this fact it appears that accused has no role in taking the victim to Dolbagan to the residence of his sister at Dolbagan.

- Mangle bring the victim to his house with an intention to perform marriage and kept her for about 44 days. Admittedly, her paternal house is situated at a distance of about two kilometer away from the house of the accused. Victim denied defence suggestion that she went to the accused on her own. From the cross examination of PW 2 it appears that he admitted before police that his daughter victim 'J' eloped with Manglu. Looking at the evidence of PW 3 it also appears that after three days of the incident, the victim was found at the residence of the accused and on this, a village meeting was convened but no decision was taken in the said meeting. From the meeting, the victim went to the house of the accused and after staying there for about two months she left the house of the accused. PW 3 being the mother of the victim has also admitted that, in the meeting the victim admitted that she on her own went to the accused.
- 19. So from the above evidence, it is clear that the allegation of forcefully taking away the victim by the accused and keeping her confined for about 49 days was not supported by the parents of the victim; rather from the evidence of PW 3, it appears that the victim is a consenting party while going to the accused and staying with him at the residence of the accused.
- 20. So far the allegation of penetrative sexual assault is concerned, from the evidence of the M.O. (PW 5), it appears that he has not detected any sign of recent sexual intercourse or marks of violence on the private parts of the victim. The victim in her evidence though stated that accused has committed sexual intercourse with her against her will and her further statement is that on returning home she informed the above matter to her parents; but on looking at the evidence of PW 2 and PW 3, it appears that they are totally silent so far physical relation between the accused and the victim is concerned. Their evidence simply related to the alleged kidnap and wrongful confinement of the victim only. As discussed above, from the evidence of PW 3 it appears that the victim on her own will went to the accused and stayed with him and after about 44 days, she on her own returned to her paternal home.

Both PW 2 and PW 3 are silent regarding any forcible sexual intercourse or even consensual intercourse between the accused and the victim during her stay with the accused. As such the evidence of PW 1, the victim alone appears to be untrustworthy so far the allegation of forcible sexual intercourse with her, wrongful confinement by the accused or forcefully taking of victim by the accused is concerned.

- Apart from above, in spite of knowing the fact that accused is with the victim, no immediate FIR was filed. Though there was a statement that on the same day an FIR was lodged, but police has not registered the case appears to be insufficient explanation, particularly in view of the fact that the victim has returned on 10.11.2013, but the complaint was lodged on 29.11.2013 only. This part of delay was never explained though as per the victim, on her return, she has informed the matter to her parents.
- 22. From the above discussions, it appears that the prosecution story as led by the prosecution witnesses is short of trustworthiness and not believable to hold the accused guilty.
- Considering all above, I am of the opinion that prosecution has failed to prove the charges u/s 366/344 IPC, R/W Section 6 of POCSO Act, 2012 or any other minor offence against the accused Manglu Rajput @ Chetry. As such, accused Manglu Rajput @ Chetry is acquitted from the charges u/s 366/344 IPC, R/W Section 6 of POCSO Act, 2012 and set at liberty forthwith.
- 24. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- 25. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 26. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 7th day of November 2017 at Sivasagar.

Special Judge Sivasagar

APPENDIX

1. Prosecution witnesses -

PW - 1 : (Victim 'J')

PW - 2 : Sri Dipak Gowalla (Informant)

PW – 3 : Sri Dandi Gogoi

PW - 4 : Sri Radha Kandha Choudhury

PW - 5 : Dr. Bhupendra Kumar Bhuyan (M.O.)

PW - 6 : Sri Prahlad Khodal PW - 7 : Sri Jadu Gogoi PW - 8 : Sri Paresh Khodal PW - 9 : Sri Haresh Rajput

PW -10 : Sri Tribhuban Saikia (I.O.)

2. <u>Defence witnesses</u> - None

3. <u>Court witnesses</u> - None

4. Exhibits by prosecution -

Exbt.1 - Statement of the victim

Exbt.2 - FIR

Exbt.3 - Complaint in court.

Exbt.4 – Medical report.

Exbt.5 - Sketch map

Exbt.6 - Charge-Sheet

Special Judge, Sivasagar