IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.20/2016

State of Assam

Versus

Shah Alom Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.Kr. Ghosh

Ld. advocate for the accused: Mr A.S.Talukdar

Evidence recorded on : 30.10.2018

Argument heard on : 02.11.2018

Judgment delivered on: 02.11.2018

J U D G E M E N T

- 1. The prosecution story in brief is that on 30.7.2016 the informant Md Anowar Hussain lodged the first information report before the Officer-incharge of Fakiragram P.S. with the allegation that his minor daughter Manjaura Begum was kidnapped by the accused on 28.7.2016 at about 8 P.M. and confined her in some unknown place. Hence, the first information report.
- 2. On receipt of the first information report in Fakiragram P.S., a case has been registered under Fakiragram Police Station case No.43/2016 under sections 120(B)/ 366(A) IPC and the case was endorsed to the ASI Isha

Hoque for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses, recovered the victim girl, medically examined her and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 366(A) IPC, R.W. section 4 POCSO Act against the accused Shah Alom. Relevant copies also furnished to the accused and my learned predecessor framed the charge under section 366(A), R.W. section 4 of POCSO Act against the accused person finding a prima-facie case. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. The prosecution side examined as many as 02 (two) witnesses including the victim and the informant as follows:-

PW 1 Md Anowar Hussain and

PW 2 Musstt Monjuara Begum.

4. The defence took the plea of total denial and he has not adduced any evidence in support of his case. Recording the statement of the accused person under section 313 Cr.P.C. was dispensed with as there was no incriminating material against the accused person in the testimonies of PWs.

5. **Points for determination:**

- (1) Whether the accused person abducted or seduced the victim Manjuwara Begum by inducing for the purpose of having sexual intercourse?
- (2) Whether the accused committed penetrative sexual assault on the minor victim ?

Discussion, Decision and Reasons thereof:

6. I have thoroughly perused the evidence of prosecution witnesses, assessed them to arrive at a just decision and hearing argument from both sides the case is decided as follows:-

- The first information report of the instant case was lodged by PW1 with the allegation that his minor daughter was kidnapped by the accused on 28.7.2016 and confined her in some unknown place. But, while deposing before the court he stated that when his daughter (PW2) did not return home after attending tuition, they searched for her in every possible place but, she could not be traced out and at the same time it has also come to the notice that the accused Shah Alom is not available in his house. So, on suspicion and mis-understanding and as per advice of the village people he filed the first information report. But, on the next day his daughter returned back and came to know that she visited to the house of her aunt without informing her parents.
- 8. PW2, the victim of this case also narrated the same story and as per her also she visited to the house of her aunt after attending her tuition without information to her parents for which her father lodged the first information report on suspicion. But, on the next day when she returned home she reported the entire incident to her father. She specifically deposed that neither the accused abducted her nor committed rape on her. She left her house at her own will and hence she has no grievance against the accused person.
- 9. So from the testimonies of both PW1 and PW2 most vital witnesses of the prosecution case, it is seen that the case was lodged against the accused only due to mis-understanding and on suspicion with the advice of the village people. PWs neither brought allegation of rape or abduct against the accused nor there is any allegation of rape or sexual harassment etc. against the accused person. Suspicion and mis-understanding arose only when the victim left her house without information to her parents. More so, the prosecution failed to bring any evidence regarding minor age of the victim.

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10. Thus, it is seen that the prosecution could not bring home the charge under section 366A IPC and under section 4 of POCSO Act against the accused person beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the court on this 02nd November/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar