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

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

Special (POCSO) 40/2019 U/S 342/376AB IPC R/W Section 6 of POCSO Act

State of Assam

-Vs-

Bakul Borah.....Accused.

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

For the Accused : Mr. M.C. Narzary, Learned Advocate.

Date of Evidence : 06-01-20: 21-01-20.

Date of Argument : 24-01-2020.

Date of Judgment : 24-01-2020.

JUDGMENT

1. The prosecution case in brief is that on 11-07-2019, at about 08 pm, the victim went to a shop near her house. When she did not return back in time her family members made search for her and found her in a compromise position with the accused Bakul Borah in the village L.P. School. On being asked by the villagers the victim girl told that the accused forcibly took her to the school from the road and committed rape upon her. In connection with the incident on 12-07-2019, mother of the victim girl lodged an FIR with the In-charge of Lalpool Out post.

- On the basis of the FIR, Rowta PS Case No. 100/19, under Section 363/376
 IPC R/W Section 4 of POCSO Act was registered. After completion of investigation Police submitted charge-sheet under Section 342/376AB IPC
 R/W Section 6 of POCSO Act against the accused Bakul Borah.
- 3. 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 person had committed offence under Section 342/376AB IPC R/W Section 6 of POCSO Act, learned Special Judge framed charge thereunder and the ingredients of charges under Section 342/376AB IPC R/W Section 6 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 06-01-2020, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 03(three) witnesses:

PW1- Smt. Fulay Swargiary.

PW2- Victim-A.

PW3- S.I. Sarafat Ali.

- 5. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused wrongfully confined Victim-A?
 - (II) Whether the accused committed rape on victim-A, a woman under 14 years?
 - (III) Whether the accused committed aggravated penetrative sexual assault upon victim-A, aged about 5 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. M. C. Narzary.
- 8. Learned defence counsel has argued that both the victim girl was major at the time of incident and PW1, the mother of the victim girl had lodged an FIR merely on suspicion. In their deposition neither the victim nor her mother has made allegation against the accused. Hence, prosecution has failed to prove the charges against the accused.
- 9. Before appreciating the arguments 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 Smt. Fulay Swargiary, informant and mother of the victim girl. In her evidence PW1 had deposed that at the time of occurrence her daughter was 18 years old. The occurrence took place about one year ago. On the day of occurrence at the material time she was not at her home. Her victim daughter was alone at home. After returning from her work when she came to her home she did not find her daughter. Later on, the accused came alongwith her daughter. So, on the suspicion that the accused was making an attempt to take away her daughter she lodged an FIR though later she came to know that accused did not take away her daughter as the victim herself went to a nearby place. She put her thumb impression in the FIR which was written by a scribe. In cross-examination, PW1 had stated that she did not know the contents of the FIR. She had no grievance against the accused.
- 11. PW2 is Victim-A. In her evidence PW2 had deposed that the occurrence took place about one year ago. At the material time the accused came to their home whom she knew since before the incident. At that time her

mother was not at home. PW2 went to a nearby house alongwith the accused and when her mother after returning from work did not find her and rather saw her and the accused came into their home together lodged an FIR merely on suspicion that accused tried to kidnap her. Her mother lodged the FIR against the accused only on the basis of suspicion. At the time of occurrence she was 18 years old. Police on the basis of the FIR registered a case and she was brought before the Magistrate to get her statement recorded U/S 164 Cr.P.C. Accordingly, PW2 gave her statement before the Magistrate as tutored by police though no such incident had occurred. PW2 had no grievance against the accused. Ext.1 is the statement U/S 164 Cr.P.C. Ext.1(1) and 1(2) are the signatures of PW2. In cross-examination, PW2 had stated that the accused neither kidnapped her nor tried to molest her on the day of occurrence.

12. PW3 is S.I. Sarafat Ali, Investigating Officer of this case. In his evidence PW3 had deposed that on 12-07-2019, he was working as In-charge of Lalpool OP under Rowta PS. On that day, on receiving a written FIR from informant Smti Fulai Swargiary, PW3 recorded Lalpool OP GD entry No. 174 dtd. 12.07.2019 and forwarded the FIR to O/c Rowta PS for registering a case. Then, SI Hemanta Baruah, O/c Rowta PS registered Rowta PS case No. 100/19 U/S 363/376 IPC R/W section 4 of Pocso act and entrusted PW3 to investigate the case. Accordingly, he recorded statement of the complainant and other witnesses U/S 161 Cr.P.C, visited the place of occurrence and prepared the sketch map of the place of occurrence. PW3 produced the victim girl before the doctor of Udalguri Civil hospital but the victim had refused to undergo medical examination. He also got the statement of the victim recorded U/S 164 Cr.P.C through learned Magistrate. In connection with the case, he arrested the accused and produced him before the Hon'ble Special Judge who forwarded the accused to judicial custody. The complainant put thumb impression in the FIR. Ext-2 is the FIR. Ext-2(1) is the signature of PW3 under the forwarding note. Ext-2(1) is the signature of O/c Hemanta Baruah under the registration note. PW3 was acquainted with his signature. Ext-3 is the sketch map of the place of occurrence. Ext-3(1) is the signature of PW3. In connection with this case, he seized school certificate and birth certificate of the victim through Ext-4 seizure list. Ext-4(1) is the signature of PW3. He also seized one black colour half pant of the victim girl through Ext-5 seizure list. Ext-5(1) is the signature of PW3. On completion of investigation, having found sufficient materials against the accused Bakul Bora, PW3 submitted chargesheet against him U/S 363/376 IPC R/W section 6 of Pocso act. Ext-6 is the charge-sheet.Ext-6(1) is the signature of PW3. In cross-examination, PW3 had stated that the informant did not put thumb impression in the FIR in front of him. The original of school certificate and birth certificate of the victim are not available in the case record. The place of occurrence was a school namely Madhab Gohain ME School. On 23-07-2019, he seized the school certificate and birth certificate of the victim. On 13-07-19, he seized the half pant of the victim. He had not seen the seized half pant today before the court. He did not send the half pant to Forensic science laboratory for examination.

13. On appraisement of the evidence on record it appears that PW1, the informant and mother of the victim girl has specifically stated in her evidence that she lodged an FIR against the accused merely on suspicion. PW2, the victim also stated that her mother lodged the FIR on suspicion. Both PW1 and PW2 have negated the prosecution version of the case that the accused kidnapped PW2 and committed rape upon her. Both PW1 and PW2 are the material witnesses of the case and they have specifically stated in their evidence that the accused neither kidnapped PW2 nor tried to molest her. It is also appeared from the PW3 the Investigating Officer of the case that during investigation of the case the victim had also refused to undergo medical examination. The refusal of the victim to undergo medical examination also created shadow of doubt as to the happening of any incident of sexual assault upon the victim. Moreover, in their evidence the

6

victim has totally negated any such incident of sexual assault upon her by

the accused.

14. In view of above discussion it appears that the prosecution has failed to

prove the charges under Section 342/376AB IPC R/W Section 6 of POCSO

Act against the accused person beyond all reasonable doubt.

15. Situated thus the points for determination are decided in the negative and

against the prosecution.

ORDER

16. In the result, the accused Bakul Borah is found not guilty under Section

342/376AB IPC R/W Section 6 of POCSO Act and acquitted of charges

under Sections 342/376AB IPC R/W Section 6 of POCSO Act beyond all

reasonable doubt and set at liberty forthwith.

17. Bail bond executed by the accused and the surety shall remain in force for

another six months under the purview of provision under Section 437-A

Cr.P.C.

18. Judgment is signed, delivered and pronounced in the open court today the

24th day of January, 2020.

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) 40/2019 APPENDIX

(A) Prosecution Exhibits :

Ext.-1 : Statement of victim u/S 164 Cr.P.C.

Ext.-2 : FIR.

Ext.-3 : Sketch map.

Ext.-4 : Seizure list.

Ext.-5 : Seizure list.

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- Smt. Fulay Swargiary.

PW2- Victim-A.

PW3- S.I. Sarafat Ali.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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