IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.83/2018

U/S-342 of IPC R/W Section 8 of POCSO Act, 2012

State of Assam

-Versus-

Md. Fiddus Ali @ Firdus Ali

s/o-Lt. Hemad Ali

Resident of vill -Barua Pathar Singrabori

P.S.-Boko

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor ------for the State

Moslemuddin Ahmed, Ld. Advocate

-----for the accused

Date of evidence: 03.05.2019, 04.05.2019

Date of Argument:09.05.2019

Date of Judgment:09.05.2019

JUDGEMENT

- 1. The Prosecution case in brief is that—on 22.03.2018 the informant—Md. Abdul Samad lodged an ejahar alleging that on 21.03.2018 at about 6.00p.m the accused Md. Fiddus Ali had forcibly taken away his minor daughter out of her house and tried to commit rape upon her. The accused is a teacher of Jatiya Vidyalaya, Baruahpathar by his profession and also home tutor of the prosecutrix. Thereafter, on the next morning at about 8.00 am the prosecutrix was recovered. And hence, this FIR.
- 2. On the basis of the said ejahar, Boko P.S Case No. 182/2018 U/S-342 of IPC R/W section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-342 of IPC R/W section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 342 of IPC R/W section 8 of the POCSO Act, 2012 against accused—Fiddus Ali @ Firdus Ali. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as four (4) numbers of witnesses including the informant and victim. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against him.

5. **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 21.03.2018 at about 6.00 p.m at wrongfully confined the minor daughter of the informant and, thereby, committed an offence punishable U/S 342 of IPC?
- (II) Whether the accused on the same date, time and place committed sexual assault upon the minor daughter of the informant and thereby committed an offence punishable U/S-8 of the POCSO Act, 2012?

6. **DISCUSSION, DECISION AND REASONS THEREOF:-**

Perused the record. Prosecution examined four (4) witnesses. Let us go through the evidences available on record.

7. P.w.1, Abdul Samad is the informant of this instant case. He has deposed in his evidence that he is the informant of this case. He know the accused person—Fiddus Ali. Prosecutrix is his daughter. The incident took place about 10 months ago at about 5/6 p.m. Prosecutrix was 13 years at the time of occurrence. At the relevant time, he was in the Balijar bazaar. Then his wife—Rehena Bibi rang and told him that prosecutrix was missing from the house and she is not found on search. He came home and searched for her but did not find her the entire night. Next morning, they found the prosecutrix in the house of the village headman—Miyer Ali, who informed them over phone. Prosecutrix was brought to his house by sister-in-law of the accused. Accused stays near the house of village headman. P.W.1 further stated that accused was the home tutor of the prosecutrix. Next morning, while the prosecutrix went to meet the accused in his house, his sister-in-law saw her and she handed her over to the village headman. P.W.1 suspected that the accused had taken away the prosecutrix with him as the village people reported him that they had often seen both of them talking to each other on several occasions in the village. He searched the prosecutrix in the house of the accused for 4/5 times, but did not find her. He enquired the accused about the prosecutrix but he told him that she did not come to his house. Then, P.W.1 lodged the ejahar against the accused on the next day of the occurrence. Prosecutrix did not tell him anything about the incident. Police recorded his statement. Police brought the prosecutrix before the Magistrate for recording her statement. Ext.1 is the ejahar. Ext. 1 (1) is his signature.

In his cross-examination, P.W.1 has stated that Prosecutrix told him that while she went to meet the accused in his house, his sister-in-law saw her and she handed her over to the village headman. Prosecutrix told him that she was hiding in the school near his house the relevant night. P.W.1 did not remember as to who told him that prosecutrix and accused were often seen and talking to each other on in the village. Next morning when sister-in-law of the accused saw her in the road near their house, she brought her to the house of the village Headman. Later P.W.1 came to know that

the accused did not take away the prosecutrix. P.W.1 disclosed that the ejahar was given on suspicion.

8. P.W.2, Musstt. Rehena Bibi has deposed in her evidence that informant of this case is her husband. She knows the accused person—Fiddus Ali. Prosecutrix is her daughter. The incident took place about 1 year ago at about 6 p.m. Prosecutrix was 13 years at the time of occurrence. At the relevant time, she was in her own house. On that day, she scolded the prosecutrix for becoming too friendly with the accused, who was her home tutor. Thereafter, prosecutrix disappeared from the house. On search, when P.W.2 could not find her, so she rang her husband (P.W.1), who was in the market and told him that the prosecutrix was missing from the house and she is not found on search. He came home and searched for her but did not find her the entire night. Next morning, at about 8 a.m, they found the prosecutrix in the house of the village headman-Miyar Ali, who informed them over phone. He told them that prosecutrix was brought to his house by the sister-in-law of the accused. On enquiry, prosecutrix told them that she was hiding in the school the whole night out of fear. Next morning, when she went to the house of the accused to meet him, then his sister-in-law saw her and brought her to the house of the village headman. P.W.2 revealed that they suspected that the accused had taken away the prosecutrix with him as the village people reported them that they had often seen both of them talking to each other on several occasions in the village. Then, her husband lodged the ejahar against the accused out of anger and suspicion. Police recorded her statement.

In his cross-examination, P.W.2 has stated that she later on came to know from the prosecutrix that on the relevant night she hid in a nearby school for the entire night and that the accused did not take her with him as alleged. She did not meet the accused on the date of occurrence.

9. P.W.3, prosecutrix is the vital witness in this case. She has deposed that informant of this case is her father. She knows the accused person—Fiddus Ali, who was a teacher of her school and also her home tutor. The incident took place about a year ago in the evening time. She was 14 years at the time of occurrence. On the relevant day, her mother scolded her for becoming too friendly with the accused and the village people reported to her mother that they were having love affair. Thereafter, P.W.3 left the house and hid herself in the nearby school the whole night. Next

morning, at around 7 a.m, while she was going to the house of her Aunt, who stays nearby the accused person, his sister-in-law saw him and she told her the incident. She then took her to the house of the village headman—Miyar Ali, who informed her parents over phone. P.W.3 disclosed that accused did not meet her on the relevant day. Police recorded her statement. Police brought her before the Magistrate for recording her statement. Ext.2 is the statement. Ext. 2 (1) is her signature. P.W.3 revealed that she deposed before the Magistrate and police as tutored by the village people.

In her cross-examination, P.W.3 disclosed that accused did not confine her and he did not do any bad act with her.

- 10. P.W.4 Md. Miyar Ali is the village Headman. He has deposed in his evidence that he knows both the parties as well as the prosecutrix. The incident took place on 23.03.2018 at 6 a.m. P.W.4 was in his house then the sister-in-law of the accused brought the prosecutrix to his house as she was missing from the house previous day. He heard that prosecutrix was scolded by her parents at night and on the next day in early morning, the sister-in-law of the accused found her in front of their house. On enquiry, prosecutrix told P.W.4 that she hid the whole night in the nearby school as she was scolded by her parents. Thereafter, P.W.4 informed the parents of the prosecutrix and handed her over to them. Police recorded her statement.
- 11. I have heard the arguments of both the sides. Perused the evidences on record.
- 12. Section 8 of the POCSO Act deals with sexual assault. Now, **Sexual Assault** is defined **U/S 7 of POCSO Act**as "Whoever, with sexual intent touches the vagina, penis , anus or breast of the child or makes the child touch the vagina , penis ,anus or breast of such person or any other person , or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."
- 13. Now, in this instant case, it is in the evidence of P.W.3 (prosecutrix) that on the relevant day, her mother scolded her for becoming too friendly with the accused and the village people reported to her mother that they were having love affair. So, P.W.3 left the house and hid herself in the nearby school the whole night. She made it clear that no incident as alleged in the ejahar and in the statements made before the Magistrate U/S-164 Cr. P.C had taken place with her. She confirmed that the accused

did not do any bad act with her. But, she gave her statements as tutored by village people. Witnesses, P.W.1, P.W.2, P.W.4 also supported the evidence of P.W.3. Therefore, it is well proved that the accused did not wrongfully confine the prosecutrix with the intent to commit an offence. Hence, the offences U/S-342 of IPC R/W Section 8 of the POCSO Act, 2012 are not at all attracted in this instant case.

- 14. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person— Fiddus Ali @ Firdus Ali. Accordingly, the accused is held not guilty and he is hereby acquitted of the offence U/S-342 of IPC R/W Section 8 of the POCSO Act, and set at liberty forthwith.
- 15. The case is disposed of.
- 16. The Judgment is pronounced in open Court and written on separate sheets.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witnesses:

P.w.1, Abdul Samad

P.W.2, Musstt. Rehena Bibi

P.W.3, prosecutrix

P.W.4 Md. Miyar Ali

Prosecution Exhibit

Ext.1 is the FIR

Ext.2 is the statement of the prosecutrix recorded U/S-164 Cr. P.C.

Special Judge, Kamrup, Amingaon