IN THE COURT OF SPECIAL JUDGE (FTC), SONITPUR AT TEZPUR

SPL(POCSO) CASE NO. :- 94 of 2018

(Under Section 4 of Protection of Children From Sexual Offence (POCSO) Act, r/w Section 9/10 of Prohibition of Child Marriage Act arising out of GR Case No

3607 of 2018)

Present :- R. Baruah

Special Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- **1.Md Lokman Ali,** S/o Md Abdul Kadir,

2.Md Abdul Kadir, S/o Late Jabbar Ali

Resident of No.2 Bosasimolu,

PS – Dhekiajuli, Dist- Sonitpur, Assam

Date of framing charge :- 18-04-2019.

Date of Recording Evidence :- 07-08-2019.

Date of examination of accused

u/s 313 of Cr. P.C :- 07-08-2019.

Date of Argument :- 07-8-2019.

Date of Judgment :- **07-08-2019**.

Counsels of the Prosecution :- Mr A Baruah & Mrs J Baruah,

Learned Addl. Public Prosecutors,

Tezpur.

Counsel for Accused :- Mr J. Adhikary,

Learned Advocate.

JUDGMENT

1. In this case accused Md Lokman Ali is put for trial for the allegation of charge under Section 4 of Protection of Children from Sexual Offences Act

(hereinafter referred to as 'POCSO Act') and Section 9 of Prohibition of Child Marriage Act and accused Md Abdul Kadir is put for trial for the allegation of charge under Section 10 of Prohibition of Child Marriage Act, 2006.

- 2. The prosecution case in brief is that on 02-06-2018, informant Md Raisuddin lodged an FIR before the Superintendent of Police, Sonitpur stating inter alia that on 01-03-2018 at about 8.00 PM while his minor daughter "X" returning from a marriage ceremony at the house of accused Abdul Kadir, on the way accused Lokman Ali forcibly took her from the road and raped her. After hearing hulla of victim, son of informant namely Osman Gani came to the spot and at that moment the accused fled away from the spot. In this regard, the villagers decided that the victim should be kept in the house of Abdul Kadir till she attain the age of 18 years. But, on the same night accused Lokman Ali kidnapped her and forcibly marries her and thereafter he kept the victim in different places. On 20-05-2018 took the victim to his house and thereafter, the accused person assaulted her and confined the victim in his house. The FIR forwarded to the Dhekiajuli Police Station.
- 3. On receipt of the ejahar, I/C Borsola Out post made GD Entry No 138 dated 08-09-2018 and forwarded the same to OC, Dhekiajuli PS for registration. Accordingly, O/C, Dhekiajuli Police Station registered the case vide Dhekiajuli PS 686/18 under Section 143/365/323 of IPC r/w Section 4/6 of POCSO Act, r/w Section 9/10 of Child Marriage Act. Police after completion of investigation, submitted charge sheet under Section 143/365/323 of IPC, r/w Section 4/6 of POCSO Act, r/w Section 9/10 of Child Marriage Act against the accused Abdul Kadir and Lokman Ali and laid the same for trial.
- 4. On appearance of the accused and after hearing the learned Advocate for both the sides, charge under Section 4 of POCSO Act r/w Section 9 of Child Marriage Act framed against the accused Lokman Ali and charge under Section 10 of Child Marriage Act framed against accused Abdul Kadir. The above charges are read over and explained to the respective accused to which they pleaded not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution has examined only 2 (two) nos. of witnesses including the victim namely 1. Md Raisuddin, and 2.Miss "X"(victim).
- 6. Accused are examined under section 313 Cr.P.C. The defence plea is of total denial and declined to adduce defence evidence.

- 7. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.
- 8. The point for decision in this case is that
 - (1) Whether the accused Lokman Ali, on 01-03-2018 at about 8.00 PM, at No.2 Bosasimolu under Dhekiajuli PS, committed penetrative sexual assault to Miss "X" aged about 15 years minor girl and thereby committed an offence punishable under Section 4 of POCSO Act?
 - (2) Whether the accused Abdul Kadir, on the same date, time and place mentioned above, performs or conducts child marriage of victim and thereby committed an offence punishable under Section 10 of Child Marriage Act?
 - (3) Whether the accused Lokman Ali, on the same date, time and place mentioned above, being a male adult above eighteen years of age, contracts a child marriage of victim and thereby committed an offence punishable under Section 9 of Child Marriage Act?

Reasons, Decisions and reason for decision:

- 9. Before appreciating the evidences adduced by the parties, I deem it fit to reflect the evidence of the witnesses.
- 10. **PW1** the informant of this case stated in his examination in-chief as follows;

"I am the informant. Victim 'X' (name changed for this judgment) is my daughter. At the time of occurrence the age of my daughter was about 17 years. The victim had been to attend a marriage ceremony of a relative. Then, both the accused pressurized the victim to enter into marriage with accused Lokman Ali. Regarding that incident a conflict took place between both the sides. I on getting information lodge a FIR before the police as per the version of my daughter. Ext.1 is the FIR where I put my thumb impression in both the pages. As the victim was minor at that time, dispute arises in relation to her marriage. About 15 days ago, my daughter (victim) entered into wedlock with accused Lokman Ali and after marriage she is

residing with accused as his wife. Now for the wellbeing of my daughter i.e. victim I do not want to proceed with the present case."

During cross examination PW1 said that – "I have no objection, if the accused are acquitted from this case."

11. **PW2 – the victim** said in her examination in-chief that :

"I am the victim of this case. Accused Lokman Ali is my husband and accused Abdul Kadir is my father-in-law. I entered into wedlock with accused Lokman Ali about 15 days back. At the time of incident, I was about 17 years. A dispute took place when the accused Lokman Ali wanted to marry me at the time of occurrence. My father lodged FIR in connection with the same. My elder sister has been given in marriage to the elder brother of accused many years ago. On the day of occurrence, I had been to the house of accused to attend marriage ceremony of their relative. During investigation of the case, police brought me before the Magistrate for recording my statement under Section 164 of CrPC. Ext.2 is the 164 statement and Ext.2(1) & Ext.2(2) are my signatures. After the incident, we compromised the matter and some days back I entered into wedlock with accused Lokman Ali."

During cross examination, the PW1 said that "presently, I am with the accused Lokman Ali as his wife. I have given my statement before the Magistrate out of anger and emotion. I have no objection, if the accused are acquitted from this case."

12. The accused is also charged under Section 4 of POCSO Act. To prove the charge under Section 4 of POCSO Act, prosecution must prove that – **Penetrative Sexual Assault**: A person is said to commit "**Penetrative sexual**"

Assault" if –

- "a) he penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a child or makes the child to do so with him or any other person;
- b) h e inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body or the child or makes the child to do so with him or any other person; or
- d) he applies his mouth to the penis, vagina, anus, urethra or the child to do so to such person or any other person".

13. In this type of cases, the evidence of victim is much more important. Here in this case, the victim PW-2 stated that accused Lokman Ali is her husband and accused Abdul Kadir is her father-in-law. She entered into wedlock with accused Lokman Ali about 15 days back. At the time of incident, she was about 17 years. A dispute took place when the accused Lokman Ali wanted to marry her at the time of occurrence. Her father lodged FIR in connection with the same. In her cross-examination she said that presently, she is with the accused Lokman Ali as his wife. She has given her statement before the Magistrate out of anger and emotion. She has no objection, if the accused is acquitted from this case.

PW1, the father of the victim though stated by implicating the accused that at the time of incident, now for the wellbeing of his daughter he does not want to proceed with the present case. In his cross examination also he stated that he has no objection, if the accused is acquitted from this case.

- 14. The statement of the victim does not conform to the charges framed against the accused. The allegation was forcible marriage of the victim. But in the court the victim said that about 15 days ago she entered into wedlock with the accused Lokman Ali. Copy of the birth certificate of the victim is available. In the month of May, 2019, the victim (PW2) attained 18 years of age. The victim can legally enter into wedlock, now. The prosecution witnesses have not mentioned regarding penetrative sexual assault on the victim or forcible marriage. Probably, may be due to the changed circumstances or maybe not. In criminal trial the incriminating evidences is must. It is a different matter whether the evidences proved the charges. In the present case there in no evidences which points the finger of accusation towards the accused. The PW2 herself mention under what circumstance she gave the statement before the Learned Magistrate, giving lesser scope to the court to presume the complicity on the part of the accused Lokman Ali.
- 15. In view of the above discussions and reasons, it is held that none of the ingredients of the alleged charge is proved by prosecution.
- 16. In view of the above, it is held that prosecution has failed to prove the offence against the accused persons beyond all reasonable doubt. Hence, accused **Md Lokman Ali and Abdul Kadir** are acquitted and set them at liberty forthwith.

- 17. The bail bonds shall remain in force for six months from today.
- 18. Send back the GR case record to the committal court along with a copy of order.

Given under my Hand and Seal of this Court on this the 7^{th} day of **August, 2018**.

(R Baruah) Special Judge Sonitpur,Tezpur.

Dictated and corrected by me.

(R Baruah) Special Judge, Sonitpur, Tezpur

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

ANNEXURE

Witnesses examined by the prosecution:

1.PW1 - Md Raisuddin(informant) &

2.PW2 - Miss "X" (victim),

Witnesses examined by the Defence:

1.Nil.

Documents exhibited by the prosecution:

1. Ext. 1 : Ejahar,

2. Ext-2: Statement under section 164 of Cr.P.C.

(R Baruah) Special Judge, Sonitpur,Tezpur.