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

Special Case No.16/2017

State of Assam Versus

- (1) Sri Bablu Rov
- (2) Sri Bhishma Dev Adhikari Accused

Present: Smti Mitali Thakuria, M.Sc,LLB, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocates for the accused: Mr C. Mukherjee,

Mr N. Roy

Evidence recorded on : 25.8.2017, 20.02.2018 & 26.7.2018

Argument heard on : 25.4.2019

Judgment delivered on: 14.5.2019

J U D G E M E N T

1. The prosecution story in brief is that on 30.9.2015 the informant Smti Sabhya Roy, mother of the victim lodged the first information report before the Officer-in-charge of Serfanguri Police Station stating that on the same day at about 4 P.M. her daughter Miss Harojani Roy, aged about 16 years was missing and after vigorous search it has come to her knowledge that her daughter has been kidnapped by the accused Sri Bablu Roy and his elder brother Sankar Roy also involved behind kidnapping of her daughter. Hence, the first information report.

- 2. On receipt of the first information report in Serfanguri P.S. the case was registered as Serfanguri P.S. case No.82/2015 under section 366(A)/34 of IPC and the case was endorsed to ASI Ismail Hussain for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses. The statement of the victim was recorded under section 164 Cr.P.C. and medically examined the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 366(A)/376 of IPC, R.W. section 4 POCSO Act against the accused Sri Bablu Roy and Sri Bhishma Dev Adhikari.
- 3. After filing of the charge sheet the case was received by the learned Judicial Magistrate Ist class, Kokrajhar for disposal. The accused persons were granted bail after a considerable period in the jail hazot and furnishing the relevant copies to the accused persons, the learned Judicial Magistrate Ist class, Kokrajhar committed the case to this Court as the same is exclusively triable by the Court of Sessions.
- 3. My learned predecessor heard both sides on consideration of charge and accordingly finding materials the charge under section 366(A) of IPC, R.W. section 4 of POCSO Act are framed against the accused persons. The charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. The prosecution side examined as many as 07 (Seven) witnesses including the victim and the informant as follows:-

PW 1 Miss Harojini Roy (Victim), PW 2 Smti Daiboki Roy, PW3 Smti Sabhya Roy (Informant), PW4 Sri Ganesh Roy, P.W.5 Sri Sahadev Roy,
P.W.6 Sri Malin Adhikari and
P.W.7 ASI Ismail Hussain.

5. The accused persons took the plea of total denial while recording their statement under section 313 of Cr.P.C., and declined to adduce any evidence.

Points for determination:

- (1) Whether the accused kidnapped the victim Miss Harojini Roy for the purpose of committing rape on her?
- (2) Whether the accused committed the offence of penetrative sexual assault to the minor victim ?

Discussion, Decision and Reasons thereof:

- 6. I have throughly perused the case record, evidence of the prosecution witnesses and hearing argument from both sides the case is decided as follows:-
- 7. As stated above the prosecution initiated the case on receipt of missing entry lodged by Smti Sabhya Roy stating that since 30.9.2015 from 4 P.M. her daughter Miss Harojani Roy, aged about 16 years was missing and after vigorous search it has come to her knowledge that her daughter has been kidnapped by the accused Sri Bablu Roy and his elder brother Sri Sankar Roy also involved behind kidnapping of her daughter.
- 8. The police filed the charge sheet against the two accused persons namely Sri Bablu Roy and Sri Bishmadev Adhikari. The informant also adduced her evidence as PW3 and brought the allegation that the accused Sri Bablu Roy kidnapped her daughter. Later on, the victim contacted her over telephone and thereafter she was recovered. But, she does not know about the contents of the first information report nor she has much knowledge about the kidnapping of her daughter.

- 9. PW2 grand-mother of the victim, PW4 and PW5 do not know much about the incident and they simply heard that the daughter of the informant was missing and she eloped with a boy.
- 10. PW6 is the driver of the vehicle by which the girl alleged to have been kidnapped by the accused. But, while adducing before the court he deposed that he was not driver of the vehicle at the relevant time of incident and he was forced by the police to give statement before the learned Magistrate.
- 11. So from the testimonies of P.Ws1, 2, 3, 4, 5 and 6 it is seen that they do not know much about the prosecution case. The informant herself has not stated specifically anything against the accused except the allegation that her daughter was kidnapped by the accused Bablu Roy.
- 12. So the most important and vital witness of the entire prosecution case is the victim/PW1. She alleged that on the day of the incident she was going to the house of her maternal uncle when the accused kidnapped her from the road on his bi-cycle at Ramfalbil. Thereafter he took her to Sapatgram to the residence of her elder sister and he again took her to the residence of Muslim family where from she informed her brother and after two days she was recovered. She also brought the allegation that the accused also had sexual intercourse with her during the days he kept her in the house of Muslim family. She denied when suggested that she herself went with the accused out of love affairs.
- 13. From the testimony of the victim it is seen that she was alleged to have been kidnapped by the accused Sri Bablu Roy from the road while she was coming from her maternal uncle's house. It is specifically stated that he took on his bi-cycle to Ramfalbil and thereafter he took her to the residence of her elder sister and then he took her took to the residence of a Muslim family.

But, surprisingly neither she raised any protest nor there is any evidence that she tried to get free herself from the hands of the accused Sri Bablu Ray. Without making any protest she went with him on his bi-cycle first to Ramfalbil, then to Sapatgram and thereafter to the residence of a Muslim family. It is admitted that when a person runs by bi-cycle he cannot restrain the other person sitting in front of him as his hands had to be on the handle of the bi-cycle. The victim also remained silent and did not say anything as to how he was recovered from the house of Muslim family. The I.O. (P.W.7) deposed that both the victim and the accused were recovered from the house of one Amar Faruk but, I.O. did not examine the person from whom the victim was stated to be recovered. More so, from the statement of the victim recorded under section 164 Cr.P.C. it reveals that she herself went with the accused out of love affairs only to visit to the house of elder sister of the accused but, when elder sister of the accused informed police she fled away from her residence and went to the house of one Muslim family. Thus, it is seen that the victim herself contradicted her own statement in two stages creating doubt in the veracity of her evidence. It is settled law that conviction can be based on the sole testimony of the victim if her evidence inspires confidence.

- 14. But, here in the instant case as discussed above, the victim herself contradicted her own statement and hence her statement cannot be believed to base conviction of the accused. More so, none of the witnesses corroborated the victim and they do not know much about the incident.
- The learned advocate for the accused also raised the point in the argument that as per the victim she made a contact with her elder brother Sri Hariprasad Roy over telephone but, surprisingly the prosecution did not examine her elder brother who rescued the victim from the house of one Muslim family.

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16. In view of the discussion made above, it is seen that the prosecution could not establish the case against the accused Sri Bablu Roy that he kidnapped the victim or there was penetrative sexual assault by him. The police filed the charge sheet against another accused Sri Bhishma Dev Adhikari but, there is no whisper against this accused person as to how and what manner he was involved in the alleged offence.

17. So from the detail discussion made above, I am of the opinion that the prosecution could not establish the case against the accused Sri Bablu Roy and Sri Bhishma Dev Adhikari under section 366 of IPC, R.W. section 4 of POCSO Act beyond all shadow of doubt and hence giving the benefit of doubt I hereby acquit the accused persons and set them at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the Court on this 14th May/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge, Special Judge, Kokrajhar