

Date of Proceeding	Order or other proceeding	Signature of Court	Office action taken on order with date and dated signature of pleaders of parties when necessary
03.10.2019	<p>Accused person namely – Prantosh Deb is represented by his Ld. Counsel, Shri. A. A. Laskar.</p> <p>The Judgment is delivered and pronounced in the open Court today and a separate copy of Judgment is tagged with the case record.</p> <p>I hold that the prosecution has failed to establish the prosecution case beyond reasonable doubt and the accused is entitled to benefit of doubt. Accused person namely – Prantosh Deb is acquitted and set at liberty forthwith.</p> <p>A copy of the Judgment be sent to the District Magistrate U/S 365.</p> <p>Bail bond of the accused shall remain in force for the next 6 (six) months u/s 437(A) Cr. PC.</p> <p>The Sessions Case No. 41/2018 is disposed of on contest.</p>		

IN THE COURT OF SESSIONS JUDGE :::: DIMA HASAO, HAFLONG.**SESSIONS CASE NO. 41/2018****(Under Section 366A/ 376 IPC R/W section 4 of POCSO Act)*****The State of Assam*****-Vs -*****Prantosh Deb***

..... Accused,

PRESENT:- Shri. Abhijit Bhattacharyya
Sessions Judge, Dima Hasao.**COUNSELS:-** Sri A. Chakravarty, Ld. PP for the State.
Shri. A A Iaskar, Ld. Advocate for the accused.**Date of Argument: 23.07.2019****Date of Judgment: 03.10.2019**

JUDGMENT

The prosecution case, in brief, is that one Smt. Kalpana Roy, lodged an FIR before the OC, Haflong Police Station on 05.05.2018 at about 9:30 am to the effect that since 03.05.2018 from about 6:00 pm, her daughter (prosecutrix) aged about 14 years went missing from their home at Apollo Road, Haflong. The informant also stated in the aforesaid FIR that she suspected their own son-in-law, Shri. Prantosh Deb, to have kidnapped her daughter(Prosecutrix) as he was also not available at Haflong at the relevant point of time.

After receipt of the above FIR a case was registered vide Haflong PS case No. 38/2018 U/S 363 of IPC R/W section 4 of the POCSO Act. During the course of investigation the victim was recovered from the house of the accused by the Police. On completion of investigation, the I.O filed chargesheet against accused Prantosh Deb U/S 363 of IPC R/W section 4 of the POCSO Act.



My predecessor in office framed charges u/s 366A/376 IPC R/W section 4 of POCSO Act against the accused. Those charges had been read over, interpreted and explained to the accused to which the accused pleaded not guilty and claimed to be tried. The Prosecution examined as many as 10 (ten) witnesses including the M.O and the I.O. Further, Shri. JMAK Tapadar, SDJM, Dima Hasao who recorded the statement of the victim u/s 164 of Cr. PC was examined as CW – 1. The accused was generally examined on the circumstances coming up in the evidence of the PWs. The accused pleaded total denial and stated that he had been falsely implicated in the case.

POINTS FOR DETERMINATION:

1. Whether the accused person namely, Prantosh Deb induced the Prosecutrix who was below 18 years of age from the lawful guardianship of her parents with the intent that she may be forced or seduced to illicit intercourse with another person and thereby committed the offence u/s 366A of IPC?

2. Whether the accused Prantosh Deb committed rape upon the Prosecutrix and thereby committed the offence u/s 376 IPC?
3. Whether the accused Prantosh Deb committed penetrative sexual assault upon the prosecutrix and thereby committed the offence under section 4 of the POCSO Act?

DISCUSSION ON THE POINT FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASONS:



PW – 1 is Kalpana Roy who is the informant and mother of the prosecutrix. PW – 1 stated that the accused Prantosh Deb is her son-in-law and that the Prosecutrix is her younger daughter. PW- 1 stated that one day as her younger daughter (Prosecutrix) arrived home a little late from school, she had reprimanded her for her late coming. Thereafter PW – 1 had gone to her shop and after closure of the day's business when she returned home she found her younger daughter (Prosecutrix) missing. Though they had searched for the Prosecutrix they could not trace her. She lodged the FIR/Missing Report at the PS which was exhibited as Ext – 1. After two days the Prosecutrix arrived with the accused. On being asked the Prosecutrix told her that she had gone on an outing with her brother-in-law.

During her cross examination PW – 1 stated that after her return back to their home the Prosecutrix did not relate to any sexual conduct of the accused. PW – 1 also stated that the Prosecutrix was aged about 19 – 20 years at the relevant point of time. PW – 1 stated that her personal relationship with her son-in-law was smooth. She also stated that she had not come across any incident with regard to her son-in-law making any overtures towards the Prosecutrix and neither did the Prosecutrix complained to PW – 1 regarding the accused asking for sexual favours at any point of time. PW – 1 also stated that the accused used to take the Prosecutrix to her school sometimes.

PW – 2 is the victim (Prosecutrix). PW – 2 stated in her deposition that the accused is her brother-in-law. PW – 2 stated that she was a student of class – VIII at the relevant point of time. One day as she had come home late from school she was reprimanded by her mother for which

she felt highly offended and had gone out with her brother-in-law without informing her mother. She stated that she did not know the place to which she had been taken by her brother-in-law (accused). She stated that later she came to know that it was the house of the sister of the accused and that the sister of the accused lives with her husband and two children at Silchar. PW – 2 stated that in the night she had slept with the sister of the accused at whose house they had stayed. She also stated that they stayed there for one night but she did not have any physical relation with her brother-in-law during her stay there. PW – 2 also stated that the following morning they came back to Haflong and stayed at the house of her brother-in-law (accused) from where her mother had brought her home. The Police had come and arrested the accused in view of the case registered against him. She also stated that she was medically examined and thereafter she was taken before a Magistrate who recorded her statement u/s 164 of Cr. PC. PW – 2 stated that she had given her statement before the Magistrate which was proved and exhibited as Ext – 2.



In her cross examination PW – 2 stated that the accused did not have any physical relation with her during their stay at the house of the sister of the accused. She also stated that the accused never asked for sexual favours earlier. She stated that she had given her statement before the Police and the Magistrate as she was in a state of panic. The Prosecutrix (PW – 2) also stated that whatever she had stated before the court in her evidence was without being influenced by anyone. She also stated that her sister has an issue (child). She also stated that the accused lives with her sister. She stated that the case has been filed by her mother as she was upset after finding her missing from the house.

PW – 3, Shri. Bipod Ranjan @Bapon Ghosh, PW – 4

Shri. Alok Roy and PW – 5 Shri. Ranjan Nath are mere hearsay witnesses and the above three witnesses did not state anything legally incriminating against the accused Prantosh Deb. The counsel for the accused declined to cross examine all the aforesaid three witnesses.

PW – 6 is Shri.Taj Uddin who only stated that he heard that the accused had taken the Prosecutrix with him.

During his one line cross examination PW – 6 stated that the informant Kalpana Roy told him that the Prosecutrix had eloped with the accused.

PW – 7 is Shri. Abhinash Roy who is the father of the Prosecutrix. PW – 7 stated that the accused Prantosh Deb is his son-in-law, he having married the elder daughter of PW – 7. PW – 7 stated that the accused is like his son. PW – 7 stated that one day on his return from work he found his younger daughter missing. He also stated that having failed to trace the prosecutrix his wife had lodged a missing entry at Haflong PS. Later PW – 7 came to know that the accused had gone with his younger daughter.

During his short cross examination PW – 7 stated that he was not aware where the accused and the Prosecutrix had gone.

PW – 8 is Dr. Nenei Hrangkhola, working as M&HO at Haflong Civil Hospital. PW – 8 stated that on 06.05.2018 she had examined the Prosecutrix aged about 15 years in connection with Haflong PS Case No. 38/2018 u/s 363 of IPC. After examination PW – 8 had recorded her findings as follows:

- 1. Number of teeth – 28 nos.**
- 2. No injury seen on the parts of the body.**
- 3. X – Ray finding: All epiphyseal fusion 50% completed.**
- 4. The age of the victim was 14 to 15 years.**
- 5. No violation marks seen.**
- 6. There was a sign of sexual intercourse.**

PW – 8 proved her medical report as Ext – 3.

In her cross examination PW – 8 stated that the age determination done through ossification test was approximate. PW – 8 denied the suggestion that the age of the victim is not in conformity with her actual age. She stated that the findings are purely clinical and diagnostic and that the hymen may get ruptured while cycling and other physical activities.

PW – 9 is Sub inspector of Police, Shri. Atikhur Rahman who was posted on 15.05.2018 at Haflong PS as attached officer. On that day he received a case diary from the OC, Haflong PS for investigation and having found that the investigation had already been completed by A.S.I Tikendrajit



Singha he submitted chargesheet against accused Prantosh Deb which he exhibited as Ext – 3.

PW – 10 is A.S.I of Police, Shri. Tikendrajit Singha posted at Haflong PS. PW – 10 stated that on 05.05.2018 the OC Haflong PS after registering Haflong PS Case No. 38/2018 endorsed the same to him for investigation. During investigation PW – 10 examined the complainant and other available witnesses and also visited the PO. PW – 10 searched the house of accused Prantosh Deb and recovered the victim girl (Prosecutrix) from his house. He proved and exhibited the search list as Ext – 4. After arresting the accused he forwarded the accused to court. PW – 10 also got the victim girl medically examined at Haflong Civil Hospital and also got her statement recorded before a Magistrate u/s 164 of Cr. PC. He also seized one Birth Certificate of the victim girl which he exhibited as Ext – 5. PW – 10 also collected the medical certificate from Haflong Civil Hospital. Thereafter he submitted the case diary to the OC, Haflong PS and thereafter the charge sheet was submitted by S.I of Police Shri. Atikur Rahman.

Apart from the aforesaid prosecution witnesses, Shri. JMAK Tapadar, SDJM, Dima Hasao who was posted as Judicial Magistrate First Class cum Munsiff at Haflong on 06.05.2018 was examined as CW – 1. He proved the statement of the Prosecutrix recorded u/ 164 of Cr. PC as Ext – 2.

In the instant case out of 10 (ten) prosecution witnesses, PW – 8 is the medical officer whereas PW – 9 and PW – 10 are investigating officers. Out of the remaining seven witnesses PW – 3, PW – 4, PW – 5, PW – 6 & PW – 7 did not state anything incriminating against the accused Prantosh Deb. Therefore the evidence of PW – 1 (informant cum mother of the Prosecutrix) and PW – 2 (the Prosecutrix) are very important.

I have carefully gone through the evidence of both PW – 1 and PW – 2. However a close and careful scrutiny of the evidence of PW – 1 would reveal that apart from stating that her daughter was missing and that she had filed the FIR Ext – 1 after failing to trace her, PW – 1 has not stated anything incriminating against her son-in-law who is the accused. In fact, during her cross examination, PW – 1 stated that the Prosecutrix did



not relate to any sexual conduct of the accused and that she had not come across any incident with regard to the accused ever making any overtures or any demand for sexual favours from the Prosecutrix.

Now coming to the evidence of the Prosecutrix, she also did not state anything incriminating against the present accused Prantosh Deb in respect of the charges levelled against him. Though the Prosecutrix admitted that she had given her statement before the Magistrate (Ext – 2) in a state of panic, she did not reiterate or reaffirm the said statements in the Court. She also stated that she had deposed before the court without being influenced by anyone. She also stated that her mother filed the FIR as she was upset.

The above is the threadbare discussion of the prosecution evidence on record.

I have gone through the entire case record including the evidence. I have also heard Ld. PP, Dima Hasao as well as Ld. Counsel for the accused.

In a criminal trial the prosecution has to prove its case beyond reasonable doubt. However, from the above discussion I have come to the conclusion and finding that the prosecution has failed to bring home the charges against the accused Prantosh Deb beyond reasonable doubt.

In view of the aforesaid facts and circumstances of the case, the accused Prantosh Deb is acquitted and set at liberty forthwith.

A copy of the Judgment be sent to the District Magistrate U/S 365 of Cr. PC.

Bail bond of accused shall remain in force for the next 6 (six) months u/s 437(A) Cr. PC.

Given under my hand on this 3rd day of October, 2019.

Sessions Judge,

Dima Hasao.
Sessions Judge,
Dima Hasao, Haflong

APPENDIX:-**PROSECUTION WITNESSES :-**

1. PW – 1 Smt. Kalpana Roy
2. PW – 2 Prosecutrix
3. PW – 3 Shri. Bipod Ranjan @Bapon Ghose
4. PW – 4 Shri. Alok Roy
5. PW – 5 Shri. Ranjan Nath
6. PW – 6 Shri. Taj Uddin
7. PW – 7 Shri. Abhinash Roy
8. PW – 8 Dr. Nenei Hrangkhol, M.O
9. PW – 9 Shri. Atikur Rahman, I.O
10. PW – 10 Shri. Tikendrajit Singha.

PROSECUTION EXHIBITS :

1. Ext – 1 FIR
2. Ext – 2 Statement of the Prosecutrix u/s 164 Cr. PC.
3. Ext – 3 Medical Report
4. Ext – 4 Search List
5. Ext – 5 Birth Certificate of Prosecutrix
6. Ext – 6 Chargesheet (wrongly recorded as Ext – 3 in the deposition of PW - 9).

COURT WITNESS:

1. CW – 1 Shri. JMAK Tapadar, SDJM, Dima Hasao, Haflong.

Sessions Judge,
 Dima Hasao.
 Sessions Judge,
 Dima Hasao, Haflong