IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

Special (POCSO) Case No.-19/2018

U/S- 366 IPC, r/w Section-4 of the POCSO Act.

State

- Versus -

Sri Sanjit Mandal

: Accused person.

Present:

Md. A. Rahman, AJS Special Judge, Nagaon.

Appearance & particulars :-

For the State : Sri M.J. Neog, Ld. Special Prosecutor.

For the accused person : Md. H.U. Ahmed, Ld. Advocate.

Charge framed on : 01/11/2018.

Evidence recorded on : 08/02/2019, 16/05/2019,

05/08/2019.

Date of recording 313 Cr.P.C. statement: 05/08/2019.

Date of Argument : 05/08/2019.

Date of Judgment : 05/08/2019.

JUDGMENT

- 1. One Monilal Barman (actual name withheld) lodged Ext.-1 FIR on 09/03/2016 with the I/C of Sibasthan P.P. under Samaguri Police Station to the effect that on 07/03/2016 accused Sanjit Mandal kidnapped his daughter "Miss. X" (name withheld) to his broiler farm at Village- Khaloiati and committed rape on her. After coming to know about the occurrence, the neighbours of the accused handed over the victim at Sibasthan Police Patrol Post.
- 2. Having received the Ext.-1 FIR, the I/C of Sibasthan P.P. made GDE No.-152, dated-09/03/2016 and forwarded to the O/C of Samaguri Police Station for registering a case. Accordingly, Samaguri P.S. Case No.-59/2016 u/s-376 IPC was registered. S.I. Dharmendra Kumar Baishya, the I/C of the said P.P. had taken up the investigation of the case.
- 3. During the course of investigation, police visited the place of occurrence, drew Sketch Map and recorded the statements of the witnesses including the victim girl. She was also medically examined through the doctor at Nagaon B.P. Civil Hospital. Besides, her statement u/s-164 Cr.P.C. was also recorded. On completion of investigation, police submitted Charge Sheet against accused Sanjit Mandal u/s-342 IPC, r/w Section-4 and 18 of the POCSO Act.
- 4. Learned JMFC, Kaliabor committed the case to the court of the Hon'ble Sessions Judge, Nagaon / Hon'ble Special Judge, Nagaon.

After receiving of the case record, the instant Special (POCSO) case was registered. Subsequently, the case record was transferred to this court for disposal. Be it mentioned here that the accused was granted anticipatory bail by the Hon'ble High Court and accordingly he was released on bail.

- 5. After considering the materials on record, charges u/s-366 IPC, r/w Section-4 of the POCSO Act were framed, read over and explained to the accused person. He pleaded not guilty and claimed to be tried.
- 6. Prosecution during the trial examined three witnesses including the victim girl and her father. Considering the evidence of the victim and her father, further prosecution evidence was closed. The accused was examined u/s-313 Cr.P.C. The defence plea is of total denial of the prosecution allegation.
- 7. I have heard Mr. M.J. Neog, learned Special Prosecutor as well as Mr. H.U. Ahmed, learned Counsel for the defence. I have also thoroughly and meticulously gone through the evidence and materials on record.

8. Now the points for determination are as follows:-

(a) Whether on the intervening night of 07/03/2016 and 08/03/2016 at Village- Borbalitoop, the accused having induced the victim "Miss. X" with a plea of marriage kidnapped her to his broiler farm at Village- Khaloiati under Uluoni Police Station with an intention or knowing that she may be seduced or forced to illicit intercourse and thereby committed an offence punishable u/s-366 IPC?

(b) Whether on the same date, time and place, the accused having kidnapped "Miss. X", minor daughter of the complainant, committed penetrative sexual assault upon her and thereby committed an offence punishable u/s-4 of the POCSO Act?

DISCUSSION, DECISIONS AND REASONS THEREOF

- 9. Considering the allegations in the FIR and that both the offences were committed in the same transaction, both aforesaid two points are being discussed together. Before entering upon the analysis and appreciation of evidence, it is necessary to take a glimpse of the relevant statements of the witnesses.
- 10. PW-1 is the complainant as well as the father of the victim girl. PW-2 (Miss. X) is the victim of this case. PW-3 Sanjit Mandal is a neighbour of PW-1. PW-1 has deposed that the occurrence took place about 3(three) years back on the night of Sivaratri. His daughter (PW-2) eloped with the accused to his broiler farm as they were in love affairs. Although the accused took her to his house, but his family members did not accept her. Therefore, she was handed over at Sibasthan Patrol Post. She has clearly stated that at the relevant time of occurrence, his daughter (PW-2) was 18 years old. He has confirmed that Ext.-1 is the Ejahar lodged by him and Ext.-1(1) is his signature. His daughter was recovered after two days of the occurrence. Police seized the birth certificate of his daughter from his wife vide Ext.-2 Seizure-list. Ext.-2(1) is his signature.

In cross-examination, PW-1 has reiterated that because of long love affairs his daughter voluntarily went to the broiler farm of the accused during Sivaratri night. The case was lodged as the mother and

the sister of the accused opposed to the marriage of his daughter with the accused.

11. PW-2 "Miss. X" is the victim of this case. Her evidence was recorded on 16/05/2019. On the said date, she stated her age to be 20 years. She has testified that about 3(three) years back on Sivaratri night she had gone to the broiler farm of the accused after getting a telephonic call from him. She has love affairs with the accused. On the relevant night both of them spent the night at the broiler farm. On the next morning, accused Sanjit Mandal fled away when his mother and sister came to the broiler farm. She has further testified that she was continuously trying to get married with the accused. She has confirmed that Ext.-3 is her statement before the Magistrate. Ext.-3(1) to Ext.-3(5) are her signatures.

During cross-examination, she has clearly stated that she voluntarily went to the broiler farm of the accused. Her father lodged the case against the accused out of anger. She has clearly stated that she has no any grievance against accused Sanjit Mandal. Still she loves him.

12. PW-3 has deposed that about three years back, accused and PW-2 eloped away. The family members of accused handed over PW-2 at Sibasthan Police Patrol Post. He accompanied PW-1 to bring her from the said Patrol Post.

In his cross-examination, he has stated that he himself did not see the actual occurrence. He also cannot say if there was any love affairs between the accused and PW-2.

- 13. Now, the most crucial point for testimony is what was the age of the victim girl (PW-2) on 07/03/2016 being the date of alleged occurrence. PW-1 has mentioned the age of PW-2 to be 16(sixteen) years in Ext.-1. But while deposing before the court, PW-1 stated that the age of PW-2 was 18 years. PW-2 in her Ext.-3 statement stated her age to be 14 years on 10/03/2016 when her statement was recorded. On 16/05/2019 being the date of recording her statement, PW-2 stated her age to be 20 years. Thus, from the evidence of PW-2, it appears that she was around 17 years old on the relevant date of occurrence. The prosecution did not submit the age-proof certificate of PW-2 to ascertain her age. On the other hand, medical examination report available in the case record reveals that her radiological age was above 20 years. The father knows better the age of his own daughter. Therefore, the evidence of PW-1 that PW-2 was 18 years at the relevant time of occurrence is acceptable which is also consistent with her radiological age. Thus, the prosecution has failed to establish that PW-2 was below 18 years on the relevant day of the alleged occurrence.
- 14. From the above discussion, it appears that PW-2 having attained the age of 18 years was a major girl at the relevant time of occurrence. It is proved from her evidence that she voluntarily went to the broiler farm of the accused on the relevant night of occurrence. Therefore, it appears that no offence u/s-366 IPC has been made out.
- 15. Now coming to the offence u/s-4 of the POCSO Act is concerned, it has been already held that PW-2 was a major girl at the relevant time of the alleged occurrence. She has not stated before the court at the time of recording the evidence that the accused committed sexual intercourse with her. It is well settled that statement u/s-164 Cr.P.C. is not a substantive piece of evidence and it may be

used for corroboration or contradiction. When PW-2 has not stated about making any physical relation with her by the accused on the relevant night of occurrence, Ext.-3 cannot prove the physical intercourse with her by the accused. Even if Ext.-3 is taken to be true, then also the physical intercourse in between PW-2 and the accused happened with her will and consent.

- 16. In the light of the above discussion of evidence and observation, it is found that the prosecution has failed to prove the charges u/s-366 IPC, r/w Section-4 of the POCSO Act beyond reasonable doubt. So, the accused stands acquitted on benefit of doubt.
- 17. The bail bond and sureties shall remain in force for another 6(six) months in the spirit of section 437(A) Cr.P.C.
- 18. The Sessions case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 5^{th} day of August, 2019.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

<u>APPENDIX</u>:-

Oral evidence :-

PW-1 Sri Monilal Barman (actual name withheld).

PW-2 "Miss X" (name withheld).

PW-3 Sri Sanjit Mandal.

Documentary evidence :-

Ext.-1 FIR (Ejahar).

Ext.-2 Seizure-list.

Ext.-3 Statement of the victim recorded by Magistrate u/s-164 Cr.P.C.

Defence did not adduce any evidence.

Special Judge, Nagaon.