

Special (POCSO)(T 1) Case No. 17/2018.

U/S - 4 of the POCSO Act.

State

- Versus -

Dilwar Hussain Barbhuiya

..... Accused.

PRESENT :- Shri D. Bhattacharjee, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri A.H. Laskar, Ld. Advocate.

Date of recording evidence

:- 08.11.2018.

Date of recording statement u/s 313, CrPC :- 12.11.2018.

Date of Argument

:- 12.11.2018.

Date of Judgment

:- 12.11.2018.

JUDGMENT

The prosecution case, in brief, is that on 4.6.2018 the informant Bilatun Nessa Laskar lodged an ejahar with the O/C, Hailakandi Police Station alleging that on 4.6.2018 in the morning she went out of the house, keeping her daughter i.e. the victim in the house and at about 4 PM she returned to the house and on arrival in the house, the victim and others informed that during her absence in the house, the accused person Dilwar Hussain came to her house and took the victim inside the room of their house forcefully and committed rape on the victim therein.

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- 2. On receipt of the ejahar, the same was registered as Hailakandi Police Station case No. 413/2018 under Sec. 448/506/34, IPC and during investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC and after completion of investigation submitted charge sheet against the accused person Dilwar Hussain Barbhuiya under Sec. 4 of the POCSO Act.
- 3. On appearance of accused person Dilwar Hussain Barbhuiya, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charge has been framed against the accused person Dilwar Hussain Barbhuiya under Sec. 4 of the POCSO Act. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- Nos. of Pws including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

6. Heard argument of both sides. Perused the record.

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7. POINT FOR DETERMINATION :-

Whether the accused person on 04.06.2018 in the Evening at village Balikandi Pt. I under Hailakandi PS committed penetrative sexual assault on the victim, as alleged?

DISCUSSION, DECISION AND REASONS THEREOF:

8. The PW. 1, the victim, has deposed that during the month of last Ramjan, one day at about 12 Noon, she was in her house and then she eloped with the accused as she had love affair with him and at that time, she was 18 years old. It is further deposed by the victim that her mother did not agree to the relation and as such, she filed the case and subsequently, she got married the accused and she has been living with the accused as his wife peacefully.

In cross examination, the victim has stated that she has got no accusation against the accused.

yictim, has deposed that one day she did not find her daughter in the house and then she filed the case putting her thumb impression. It is further deposed by the informant that subsequently, police recovered her daughter from the house of accused and then the informant came to know that her daughter got married with the accused out of love affair and at present she is residing with the accused peacefully.

In cross examination, the witness has stated that she can not say the contents of the FIR.

In the instant case, the evidence of the victim is of much importance in deciding the case. In her evidence she has made the fact clear that on the relevant day she eloped with the accused as she had love affair with him and got married the accused and at that time, she was aged 18 years and presently, she has been living with the accused Contd....P/4.

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peacefully. The informant (PW. 2), who is the mother of victim supporting the contention of the victim has reiterated the fact that out of love affair, the victim got married the accused and at present she is residing in the house of accused peacefully. As such, when the victim herself as well as the informant has not supported their own case, I do not find any cogent reason to hold the accused person guilty for the commission of the offence, alleged.

- 11. Accordingly, it can be safely held that the prosecution failed to prove its case against the accused person beyond all reasonable doubt.
- 12. The accused person Dilwar Hussain Barbhuiya is acquitted of the offence charged under Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- 13. The bail bond of the accused stands discharged.
- 14. Send a copy of this judgment to the Ld. District Magistrate, Hailakandi.

of November, 2018. The judgment is delivered today, on this the 12th day

Special Judge, Hailakandi. SPECIAD JUDGE HAILAKANDI

Dictated and corrected by me :-

Special Judge, Hailakandi.

SPECIAL JUDGI

Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I. Contd....P/5.

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Appendix :-

Oral evidences :-

PW. 1, the victim.

PW. 2, Bilatun Nessa.

Documentary evidences:

Nil.

Defence did not adduce any evidence.

Special Judge, Hailakandi
SPECIAL JUDGE
HAILAKANE