IN THE COURT OF ADDITIONAL SESSIONS JUDGE (FTC), DARRANG, MANGALDAI.

PRESENT: Mr. J.M.Barman, A.J.S.,

Additional Sessions Judge (FTC),

Darrang, Mangaldai.

Special (POCSO) Case No.16 of 2018.

U/S: 366 (A) I.P.C. R/W 4/6 of POCSO Act

(Pertaining Dhula P.S.Case No. 26/18 u/s 366-A/34 of I.P.C R/W 4/6 of POCSO Act)

State of Assam

-Versus-

1. Seikh Abdullah,

S/O. Md. Abdush Salam Vill.- No.1 Kuwari Pukhuri,

P.S. Kharupetia,

Dist.- Darrang (Assam), and

2. Julfikkar,

S/O. Md. Kutub Ali,

Vill.- No.1 Thekerabari,

P.S. Dhula,

District- Darrang (Assam)

...... Accused persons

APPEARANCE:

Advocate for the State : - Sri Dulal Kr. Ghosh, Addl.P.P.,

Advocate for the accused : - Md. Saidur Rahman and

Smt. Riju Saikia, Advocate

Date of framing charge : - 16-11-2018.

Date of evidence : 02-05-2019.

Date of argument : 2.05.19

Date of judgment : 2.05.19

JUDGMENT PROSECUTION CASE

1. The prosecution story in brief, is that informant Begum lodged an F.I.R. with the officer-in-charge, Dhula P.S. on 17-1-2018, alleging that on 02-01-18 while the informant after attending her classes at Niz-Kharupetia Moriam College, she was waiting for bus on N.H.15 to return home, at that time the accused Abdullah who was coming in an Alto vehicle, stopped near her and asked her to board into that Alto Car. Though she refused, however, the accused using force had taken her into the Alto car with an assurance to leave her at her house, but the accused took her to Mangaldai town and he stopped his Alto Car near Tangni tea estate. Thereafter he brought out a knife and kept it on her chest and threatened her to kill. Thereafter, he tried to remove her wearing apparels and also removed his own cloth and started to commit rape on her. Accused No.2, the driver also forced her. While she screamed for help, then some members of AAMSU came and rescued her. She was afraid to disclose the matter before her parents, so delay occurred in filing the F.I.R. Hence this case.

INVESTIGATION

2. After receiving the F.I.R. from the informant, the Officer-in-Charge, Dhula P.S. registered a case as Dhula P.S.Case No. 26/18, U/S. 366-A/34 of IPC R/W Section 4/6 of POCSO Act and entrusted S.I. Hangsha Nath Thakuria to investigate the case. Upon completion of investigation, the investigating officer filed Charge-sheet against the accused Seikh Abdullah and Julfikkar,

U/S. 366-A/34 of the Indian Penal Code R/W Section 4/6 of POCSO Act.

TRIAL

- 3. After appearance of the accused person, copies of the relevant documents were furnished to him and after hearing the submission of the learned Special P.P. for the State as well as learned defence counsel on the point of charge and after going through the relevant documents as furnished by the investigating officer under section 173 of Cr.P.C, my learned predecessor found prima facie material against the accused person under section 366-A of IPC Read with section 4/6 of POCSO Act and had framed charge under the above mentioned offence against the accused person and contents of the charges were read over and explained to the accused persons by my learned predecessor to which he pleaded not quilty and claimed to be tried.
- 4. The prosecution side has examined only one witness who is the informant- victim and exhibited two documents in support of its case. After the examination of the Vitim, learned Addl.P.P verbally submitted to close the evidence of the prosecution side, as he declined to adduce any further evidence on behalf of the prosecution side, as the victim has not supported the prosecution case. As there is no any incriminating material against the accused persons, hence statement of the accused persons under section 313 of Cr.P.C are dispensed with.

Point for determination:

a. Whether the accused persons on or about 02-01-2018 on No.15 N.H. at Kharupetia under Kharupetia P.S. induced victim (x) to go from Kharupetia or to do any act with intent that she may be or knowing that it is likely that she

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will be forced or seduced to illicit intercourse with them and thereby committed an offence punishable under Section 366(A) of Indian Penal Code R/W Section 4/6 of the POCSO Act ?

DISCUSSION, DECISION AND REASONS THEREOF:

- 5. I have perused the evidence on record and also heard the submission of learned defence counsel as well as learned Addl.P.P for State.
 - The victim (PW-1) (name withheld due nature of the offence) is the informant of the instant case. She deposed in her evidence that she knows accused Abdullah since long back and she had love affairs with him since she was studying in Class-X. She has further deposed that while she was studying in Higher Secondary, her family members decided to solemnize her marriage with another person. On the day of incident she went to Kharupetia College and therefrom she went to Tangni in Abdullah's vehicle and at that time her father witnessing her travelling in the vehicle of the accused, raised hue and cry and thereafter took her home from Tangni. Thereafter the members of AAMSU came to their residence to know about the fact and instructed them to file the case against the accused persons. Thereafter, she lodged the ejahar at Dhula Police Station as per their direction. She exhibited the ejahar as Ext-1 and her signature as Ext-1(1). She has further deposed that although she was brought for medical examination, she had refused to do any medical examination. Thereafter, she was produced before the Judicial Magistrate, Mangaldai for recording her statement and Judicial Magistrate recorded her statement. She exhibited her statement as Ext-2 and her signature as Ext-2(1) and Ext-2(2).

- Now, from appreciation of the evidence of the victim, it reveals that at the time of incident she was aged about 19 years. The prosecution side has not produced any birth certificate and school certificate to prove the facts that at the time alleged incident, victim was a minor. So without any prove of document from the side of the prosecution it is held that victim at the time alleged incident was a major girl.
- 8. Now, while appreciating her evidence before the court, she has not deposed anything incriminating against the accused persons. According to her version on the date of occurrence she first went to her college ie Kharupetia college and from there she went to Tangi with the accused person in his vehicle. No where she had deposed that accused person had force her to come with him in his vehicle from Kharupetia to Tangni. It is evidence of the victim while her father had seen her inside of the vehicle of the accused Abdulla along with the accused person, he made hue and cry due to which vehicle was stopped and her father took her to her residence. Later on as per instruction of the AMMSU, she had lodged this case.
- 9. Now the victim while lodging the ejahar before the police had narrated a totally different story. As per the content of the ejahar, while she was waiting for vehicle near Kharupetia College, accused person forcefully took her inside his vehicle and took her to tengni and tried to rape her inside the vehicle. While deposing her statement under section 164 of Cr.P.C she reiterated the same thing as deposed in her ejahar. But while adducing her evidence before the court, she put forwarded a totally different story, which makes her evidence unreliable. There is no any evidence at all against the accused person regarding kidnapping and tried to commit rape upon her. Moreover it is proved that under the

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influence of organization like AMMSU, she had lodged the case against the accused persons.

- 10. Considering all these aspect, in my considered opinion prosecution side failed to prove the charge against the accused persons under section 366-A of I.P.C read with section 4/6 of POCSO Act. Accordingly both the accused persons are acquitted from the charge levelled against the accused persons under section 366-A of I.P.C read with section 4/6 of POCSO Act and set them at liberty forthwith. The bail-Bond of the accused persons shall be valid till next six months from the date of delivery of the instant judgement.
- 11. Furnish a copy of the judgement to Learned District Magistrate, Mangaldai as required under section 365 of CR.P.C.
- 12. Judgement is delivered in the open court.
- 13. Given under my hand and seal of this court on this 2nd day of May, 2019 at Mangaldai.

Dictated and corrected by me

Sd-Mr. J.M.Barman

Additional Sessions Judge (FTC), <u>Darrang, Mangaldai</u>.

Sd-Mr. J.M.BarmanAdditional Sessions Judge (FTC),
<u>Darrang, Mangaldai.</u>

Transcribed and typed by me:

Smti S.Devi. (Stenographer).

APPENDIX:

Prosecution witnesses:

PW-1: Rashida Begum (informant-victim)

Prosecution exhibits:

Ext-1: Ejahar.

Ext-2: Statement of the victim recorded U/S. 164 Cr.P.C.

Defence witnesses:

Nil.

Sd-Mr. J.M.Barman

Additional Sessions Judge (FTC), <u>Darrang, Mangaldai</u>.