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

Special Case No.12/2017

State of Assam
Versus
Md Gaji Rahman Paramanik @ Chati Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

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

Ld. advocate for the accused: Mr A.S. Talukdar

Evidence recorded on : 15.5.18, 20.6.18 and 08.5.19,

Argument heard on : 26.3.2019 Judgment delivered on : 26.3.2019

J U D G E M E N T

1. The prosecution story in brief is that on 22.02.2017 the informant Mosstt Joyton Begum, elder sister of the victim lodged the first information report before the Officer-in-charge of Fakiragram Police Station stating that on 21.02.17 at about 7 P.M. the accused Gaji Rahman Paramanik took shelter in the back side of the house of the informant with a pre-plan taking advantage of darkness and at that time the informant's younger sister Miss Hamida Begum went out for her nature's call, when the accused forcibly abducted the victim Miss Hamida Begum and committed rape on her. Hence, the first information report.

- 2. On receipt of the first information report in Fakiragram P.S. the case was registered as Fakiragram P.S. case No.15/2017 under sections 366(A)/354/376 of IPC and the case was endorsed to S.I. Imran Ali Sk. for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses including the victim girl and after completion of the investigation the charge sheet has been filed by the I.O. under sections 366(A)/354/376 of IPC, R.W. section 4 of POCSO Act against the accused Gaji Rahman Paramnik.
- 3. After filing of the charge sheet and on appearance of the accused person and after hearing both sides my learned predecessor framed the charge under sections 366/354 of IPC, R.W. section 4 of POCSO Act against the accused Gaji Rahman Paramanik. The charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. The prosecution side examined as many as 04 (four) witnesses including the victim and the informant as follows:-

PW 1 Musst Hamida Begum (Victim),

PW 2 Musstt Joyton Begum (Informant),

PW3 Mosstt Sanaton Begum and

PW4 Mosstt Jamela Bibi.

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

Points for determination:

- (i) Whether the accused kidnapped the victim Hamida Begum for the purpose of committing rape on her?
- (ii) Whether the accused outraged modesty of the victim Hamida Begum ?

(iii) Whether the accused committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidence of the prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, victim of this case deposed that when she was studying for her H.S.L.C. Examination the accused Gaji Rahman Paramanik contacted her over mobile phone and asked her to go to the back side of Sajan mandir and accused sent her SMS message informing her that he reached in the said place. Further she deposed that she initially refused to go and then he told her that he had some important matters to discuss with her and asked her to come to the back side of Sajan Mandir and thereafter she visited to the back side of Sajan Mandir to meet the accused and the accused forcibly committed rape on her. She also stated that about 4/5 months prior to the incident when she was attending class of Maths with the accused, he told her that he loves her and wants to marry her and then she raised objection and told that you are a married person. Further stated that she had love affairs with the accused. Thereafter her elder sister lodged the first information report. In cross evidence she stated that she could not say what happened on the day of incident and she also could not say who took her to the Sajan Mandir and committed rape on her. She further stated in her cross evidence that she mentioned the name of the accused Gaji Rahman Paramanik on suspicion as he was proposed to marry her.
- 8. PW2, Informant of this case stated that the incident took place on 21.02.17 at about 7 P.M. when her younger sister Hamida Begum was preparing for her H.S.L.C. Examination and she was busy in another room

and her mother was preparing food in the kitchen. She further deposed that at about 7 P.M. Hamida Begum went outside to attend her nature's call but, she did not return even after 10/15 minutes and thereafter her another sister Sanatun Begum went outside to look for Hamida and all the family members were busy in searching Hamida Begum and thereafter they found Hamida Begum near Sajan Mandir in a senseless condition and all cloths were torned and they brought her to their house. She further deposed that when they enquired about her she stated that she went out for nature's call when one person came and gagged her mouth and committed rape on her. She further stated that she could not identify the person properly but, stated that he might be accused Gaji Rahman Paramanik and she lodged the first information report on the next day. In cross evidence she stated that they brought their sister from the Sajan Mandir in the night as she was unconscious and on enquiry she stated that she could not identify the person due to darkness and she lodged the FIR on suspicion as accused earlier proposed to marry her sister Hamida.

9. PW3 deposed in his evidence that the victim Hamida Begum is her younger sister and on the day of incident at about 7 P.M. her younger sister went outside for her nature's call but, even after of long time she did not return home and they searched for her going outside but, she could not be traced out. She further deposed that they informed their elder sister over phone and on her arrival they again went to search her and finally they found her near Sajan Mandir in unconscious state. Further on enquiry she stated that she could not identify the person who took her near Sajan Mandir and she had on suspicion on the accused Gaji Rahman and thereafter stated that she could not identify the person who committed rape on her as she was semi-unconscious state. In her cross evidence she stated that she has no grievance

against the accused Gaji Rahman if he is acquitted from this case and the FIR was lodged by her elder sister only on suspicion.

- 10. PW4, Mother of the informant and victim of this case deposed that on the day of incident she was preparing food and her daughter Hamida was studying for her HSLC Examination and her daughter went outside for her nature's call and she even after lapse of long time she did not return home and they searched for her going outside but, she could not be traced out. She further deposed that they informed her son over phone and on his arrival they again searched her and finally they found her daughter near Sajan Mandir in unconscious state and brought her to their house. Further on enquiry she stated that she could not identify the person who took her near Sajan Mandir and she had on suspicion on the accused Gaji Rahman and thereafter stated that she could not identify the person who committed rape on her as she was semi-unconscious state. In cross evidence she stated that she has no grievance against the accused Gaji Rahman if he is acquitted from this case and the FIR was lodged by her elder sister only on suspicion.
- 11. So, from the discussion made above it is seen that except the victim none of the witnesses saw the incident. PW2, PW3 and PW4 found the PW1 near Sajan Mandir in unconscious state. But, they came to know from PW1 that a person came and took her gagging her mouth to Sajan Mandir when she went for her nature's call and committed rape on her. But, she could not identify the person though it was similar to the accused. The informant then lodged the FIR on suspicion as the accused earlier proposed to marry the victim. But, it is the settled principle of criminal jurisprudence that "suspicion however strong, cannot take place of legal proof". Prosecution has to prove

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the case beyond all reasonable doubt. There is no corroborating evidence that the accused had committed rape on the victim nor there is any evidence that accused had sexual assault on the minor victim.

12. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Gaji Rahman Paramanik under sections 366/354 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 and set him at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the Court on this 26th March/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar