IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 96/2018 U/S 366(A) IPC & Section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-09.05.2019

State of Assam

- Vs -

Pulakesh Talukdar..... Accused

Date of Recording Evidence on - 30.11.2019

Date of Hearing Argument on - 30.11.2019

Date of Delivering the Judgment on - 30.11.2019.

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Sri Dipak Das, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 16.05.2017 one Gopal Sarkar lodged an FIR in Mandia out post alleging inter alia that on 15.05.2017 at about 11 am accused person named in the FIR kidnapped his cousin with a view to marry her. Hence the case.
- 2. Based on the information a GD entry being Mandia out post GDE No 281 dated 16.05.2017 was entered in the general diary and initiated the investigation of the case by Anil Kr Roy. In the meantime, however, the FIR was forwarded to Baghbor P.S. which registered a case being Baghbor P.S case no 101/17 P.S. u/s 366(A) IPC R/W section 4 of POCSO Act.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses including the victim girl u/s 161 Cr.P.C., drew sketch map, sent the victim girl for medical examination, forwarded her to court for recording her

statement before Magistrate u/s 164 Cr.P.C.

- 4. On conclusion of investigation, I/O finally laid the charge sheet against accused u/s 366(A) IPC and section 4 of POCSO Act. In due course cognizance of the offence were taken and process issued to accused.
- 5. During the course of time, when accused appeared in court. Then on compliance of section 207 Cr.P.C. charges u/s 366(A) IPC and section 4 of POCSO Act were framed after hearing both sides. The particulars of the offences on being read over and explained, accused person pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution examined as many as 2 witnesses the informant and alleged victim as PW- 1 & PW-2 respectively. However, considering the nature and quality of evidence adduced by the star witnesses namely the informant and alleged victim giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. Now point for determination ;-

- Whether on 15.05.2017 at about 11 am accused induced the victim girl to go from her house to other place/places intending that she will be forced or seduced to illicit intercourse with another person including accused as alleged
- 2. Whether on the same day and time accused Pulakesh Talukdar committed penetrating sexual assault on the victim girl as alleged?

9. Discussion, Decision and reasons for such decision :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. Before going to discuss the evidence on record it would be useful to refer section 366-A IPC.

"Section 366-A IPC: procreation of minor girl: `-Whoever, by any means

whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- **"3. Penetrative sexual assault**. A person is said to commit "penetrative sexual assault" if -
- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 11. On perusal of section 366-A IPC the following ingredients are found:
 - I) The accused induces a minor girl below the age of 18 years;
 - II) she was forced to go from any place or to do any act;
 - III) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 12. Now, in the context of the offence u/s 366-A IPC let this court examine what the witnesses have said in this regard.
- 13. PW-1, the informant and PW-2 the alleged victim deposed in their evidence that the incident occurred in the year 2017. PW-2 has been residing in the house of PW-1 and accused used to visit the house of PW-1 and one day she went with accused and get married. But PW-1 filed the case. As it appears PW-1 voluntarily went with accused and get

married. On the other hand, prosecution failed to prove her date of birth with any credible documents. Moreover, the alleged victim PW-2 in her evidence stated that she is 18 years old. The victim in her cross examination stated that whatever she stated before Magistrate as tutored by family members, but fact is that she voluntarily went with accused and married him.

- 14. Now, on perusal of the offence u/s 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d).
- 15. PW-1, the informant in his evidence deposed that about two years back his cousin disappeared from his house without intimation to him for which he filed the present case against the accused person on suspicion.
- 16. On careful evaluation of the evidence of PW-1, PW-2 what crystallizes before this court is that the alleged victim girls eloped with her lover on her own will without any force or pressure because she was in love with accused person. Even though, in the FIR (Ext.1) it was alleged that accused kidnapped the girl by force, but there is no substantive evidence to that effect in the mouth of two prosecution witnesses in court. So, the ingredients of the offence u/s 366(A) IPC and section 4 of POCSO Act appears to have not attracted in the present case. Moreover, the age of the victim has also not been proved as stated. There is no evidence at all on record to show that accused had committed any penetrative sexual assault on the victim girl. Given the nature of evidence available on record going for recording evidence of remaining witnesses will not bring any positive result. None of the two prosecution witnesses have spell out a single word against the accused person.
- 17. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Pulakesh Talukdar u/s 366(A) IPC and section 4 of POCSO Act as there was absolutely no materials emerged in the mouth of the two prosecution witnesses for having found the accused person guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Pulakesh Talukdar from the offences u/s 366(A) IPC and section 4 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.

- 18. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 19. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 20. Let the case record be consigned to record room after completing the formalities.
- 21. Given under my hand and seal of this Court on this 30th day of November, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

> PW-1 = Gopal Sarkar, the informant. PW-2 = Lipika Sarkar, the victim girl.

2. The prosecution has exhibited the following documents:

Ext. 1 = the FIR.

Ext.1(1) = is the signature of the informant. Ext. 2 = the statement before Magistrate u/s 164Cr.P.C.

Ext.2(1) = is the signature of the victim girl.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.