IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.76/2018

U/S- 366 A IPC, R/W Section 6 of the POCSO Act, 2012 and section 9 of the Prohibition of Child Marriage Act.

State of Assam

-Versus-

Md. Rabbul Ali

s/o-Habizur Rahman

Resident of vill –No.2 South Rangapani

P.S.-Boko

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor -----for the State

Md. A. A. Khan, Advocate ------for the accused

Date of evidence:29.04.2019, 30.04.2019.

Date of Argument: 30.04.2019

Date of Judgment: 30.04.2019

JUDGMENT

- 1. The Prosecution case in brief is that—on 26.12.2016 the complainant Sri Haren Ch. Mandal lodged an ejahar alleging that on 23.12.2016 at about 11 p.m, the accused kidnapped his minor niece by inducing her. Hence, this case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 641/2016 U/S- 366 IPC, R/W Section 6 of the POCSO Act, 2012 and section 9 of the Prohibition of Child Marriage Act was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 366 IPC, R/W Section 6 of the POCSO Act, 2012 and section 9 of the Prohibition of Child Marriage Act.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 366 A IPC, R/W Section 6 of the POCSO Act, 2012 and section 9 of the Prohibition of Child Marriage Act, against accused person— Md. Rabbul Ali. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined three witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C are dispensed with as there is no incriminating material against him.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 23.12.2016 at about 11.00 p.m induced the minor victim girl under the age of eighteen years to go from any place or to do any act with the intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person and thereby committed an offence punishable U/S 366 (A) IPC?
- (II) Whether the accused person on the same date, time and place committed aggravated penetrative sexual assault upon the minor

victim girl and thereby, committed an offence punishable U/S 6 of the POCSO Act, 2012?

(III)Whether the accused person on the same date, time and place being an adult male above 18 years of age contracted child marriage with the victim girl and thereby committed an offence punishable under section 9 of the Prohibition of Child Marriage Act ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined as many as three (3) numbers of witnesses.
- 7. P.W.1, Haren Ch. Mandal is the informant of this case. He knows the accused. Victim is his niece. The incident took place in the year 2016. Victim was missing from the house at night. P.W.1 was informed about it by the victim's father. They searched for her but later on, they heard that the accused had taken her away. So, P.W.1 lodged the ejahar. But later on he got to hear that the accused and the victim got married and now they are living together as husband and wife and having a child. Ext.1 is the ejahar and Ext. 1 (1) is his signature.

In his cross-examination, P.W.1 has stated that there was love affair between the accused and the victim and the victim eloped with the accused on her own will to get married with him. So, they did not bring her back. P.W.1 confirmed that victim was above 18 years of age at the time of occurrence.

- 8. P.W.2, is Sri Narayan Mandal. She has stated in her evidence that informant is her elder brother. He do not know the accused. Victim is his niece. The incident took place about 3 years ago. On the relevant day, victim went missing from home. She was about 16-17 years. Next day, victim's father informed them about her missing. They searched for her but could not trace her out. They later got the information that victim eloped with the accused on her own will and she got married with him she gave birth to a child. P.W.2 disclosed that at present, victim is almost 19-20 years.
- 9. P.W.3 is the prosecutrix. She has stated in her evidence that informant is her Uncle. Accused is her husband. She had love affair with the accused since 2015. On

the date of incident, she eloped with the accused to get married. Her family members did not know about it. Thereafter, they got married. She further stated that her Uncle gave the ejahar due to misunderstanding. Accused did not kidnap her. She went with him on her own will. At present, they are living together as husband and wife and they have a 2 year old son. P.W.3 further confirmed that she was above 18 years at the time of occurrence. She gave statement before the Magistrate. Ext.2 is the statement and Ext. 2 (1) is her signature.

- 10. Therefore, from the evidence of the victim (P.W.3) it is clear that she was not a minor at the time of occurrence. She revealed that she was above 18 years of age at the time of occurrence. Further, P.W.3 disclosed that she had love affairs with the accused—Rabbul Ali since 2015 and on the day of the incident, she eloped with him on her own will to get married with him but the accused person did not kidnap her. She further stated that her Uncle gave the ejahar due to misunderstanding. Other P.Ws also supported the version of P.W.3.
- 11. So, the accused person is not implicated by the victim and the informant in any manner. It is crystal clear that the victim was not taken away forcibly by the accused person on the date of incident. She went with the accused on her own sweet will out of love affairs between them. Her evidence reveals that no any bad act was done upon her by the accused person and they are now happily married.
- 12. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused persons. Accordingly, the accused person—Rabbul Ali is held not guilty and he is acquitted of the offence U/S-366 A IPC, R/W Section 6 of the POCSO Act, 2012 and section 9 of the Prohibition of Child Marriage Act and set at liberty forthwith.
- 13. His bail bond stands cancelled. Bailor is discharged from the liabilities.
- 14. The case is disposed of.
- 15. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 30th day of April, 2019.

Special Judge, Kamrup, Amingaon

A**PPENDIX**

Prosecution Witness:

P.W.1, Haren Ch. Mandal

P.W.2, is Sri Narayan Mandal

P.W.3 is the prosecutrix

Prosecution Exhibit

Ext.1 is the FIR.

Ext.2 is the statement of the victim girl recorded U/S-164 CR. P.C.

Special Judge, Kamrup, Amingaon