IN THE COURT OF ADDL. SESSIONS JUDGE :: KAMRUP :: AMINGAON

District:	Kamrup,	Amingaon
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Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Spl. Sessions (P) case No.10/2017

U/S-366 (A) IPC R/W section 4 of the POCSO Act

State of Assam

-Versus-

Majid Ali @ Sajur Ahmed

s/o-Md. Taijuddin Ali

Resident of vill -Kharkhari

P.S.-Chhaygaon

Dist- Kamrup, Assam

-----Accused

Appearance:

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

Kutub Ali, Advocate ------for the accused

Date of evidence: 15.06.2018, 25.09.2018, 28.09.2018

Date of Argument:28.09.2018

Date of Judgment:28.09.2018

JUDGMENT

- The Prosecution case, briefly narrating is that on 11.05.2017 the complainant Smti Daibaki Rabha lodged an ejahar alleging that on 08.05.2017 at about 10.30 a.m, her minor daughter Smti Jupitora Rabha was missing from her own home. Later, it was heard that she was kidnapped by the accused person—Majid Ali @ Sajur Ahmed. Hence, this case.
- On the basis of the said ejahar, Chhaygaon P.S Case No. 349/17 U/S-366 (A) IPC 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 (A) of IPC.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 366 (A) IPC R/W Section 4 of the POCSO Act, 2012 against accused—Mojid Ali @ Sajur Ahmed. The aforesaid charge 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 is dispensed with as there is no incriminating material against him.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 08.05.2017 at about 10.30 a.m at village Bherbheri under Chhaygaon P.S induced the complainant's minor daughter –Jupitara Rabha, aged about 18 years old 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 and time committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined FOUR witnesses.
- 7. P.W.1, Smti Daibaki Rabha is the informant. The victim (P.W.4) is her daughter. P.W.1 deposed that the occurrence took place on 08.05.2018. On that relevant day she (P.W.1) was not present at her home, she went for a meeting in her village and her husband was present in the house. When she returned home at around 11.00 a.m she asked her husband whereabouts of her daughter. Then he replied that their daughter has gone for attending a marriage ceremony. But when their daughter had not returned home till evening, they went searching for her but could not trace her out. They were waiting in search of their daughter for three days. Only on 11.05.2017, P.W.1 lodged the ejahar when they come to know the name of the accused and incorporated his name in the FIR as accused when the victim rang and told them that she was taken by the accused and that she was with him. P.W.1 further deposed that the age of her daughter was 16 years and 6 months at the time of incident and was reading in class-IX in Pantan High School. Ext.1 is the ejahar, Ext.1 (1) is her signature.
- 8. In her cross-examination, P.W.1 has revealed that when she arrived home, she asked her husband about her daughter, then her husband told her that she went with her friend—Bhagyashree Rabha to attend a marriage ceremony. Further P.W.1 revealed that she did not know if there is any love affairs between her daughter and the accused but somehow she came to knew that her daughter was talking with the accused over telephone. Furthermore P.W.1 revealed that after the first incident when her daughter was given to them on 19.05.2017, then again on 21.08.2017 her daughter went out from her house to the house of the accused which P.W.1 came to know when the father of the accused informed her over telephone that her daughter went to the house of the accused. Then P.W.1 went to the house of the accused and took back her daughter and kept her at State Home at Jalukbari.
- 9. P.W.2, Dhiren Rabha has deposed in his evidence that he know the informant as well as the victim. And he saw the accused on the day of the evidence first time. He deposed that the incident took place about 2 years ago. He heard that the victim girl was missing from the house. And after 3 days of the incident when police came to

the house of the informant then he came to there. But he did not know about the incident.

- 10. P.W.3, Sri Sabin Rabha is the husband of the informant and father of the victim. He knows the accused person. He deposed that the incident took place a year ago. at the time of incident victim was 14 years old. On the day of occurrence he had gone to attend a marriage in the village. And at 4.00 p.m when he returned home, he did not find his daughter at home. She was left alone at home. He and his wife went searching for her till the night. After searching for her for three days, as she was untraceable, they gave the ejahar against the accused person. They incorporated the name of the accused as the victim and the accused used to speak often over telephone. After two days of lodging the ejahar, police recovered the victim and the accused in the house of the accused and brought them to Chhaygaon P.S. Thereafter police took the victim for medical examination and produced her before the Court for recording her statement.
- 11. In his cross-examination P.W.3 has revealed that he knew that the victim used to speak with the accused quite often over telephone and therefore out of anger, he broke her mobile phone before the incident. And on the day of occurrence, they did not give the ejahar as because the victim told them that she was going to attend her friend's marriage in the village. Then after lodging the ejahar about 15-20 days later, victim again went away to the house of the accused person and this incident was informed to them by the father of the accused, who handed over the victim before Chhaygaon P.S. At present victim is with them.
- 12. P.W.4, Jupitara Rabha is the victim girl. She stated that the informant is her mother. The incident took place about 1 ½ years ago. This witness disclosed that since two years before the occurrence, she was having an affair with the accused person. And on the date of occurrence, she went for roaming with the accused person on her own will without informing her parents. She further disclosed that the accused did not kidnap her nor did he do anything with her. The accused promised to marry her later. But, police recovered her. But again on two occasions, she went away with the accused for roaming without informing anyone at home. She further deposed that her mother gave the case out of some misunderstanding. She disclosed her age as 18 years at the time of occurrence. Further, she deposed that police took her for

medical examination and she was brought before the Magistrate for recording her statement. Ext.2 is the statement. Ext.2 (1) and Ext.2 (2) are her signatures.

13. Therefore, from the evidence of the victim girl (P.W.4) it is clear that she was not a minor at the time of occurrence. She revealed that she attained 18 years of age. Further, P.W.4 disclosed that she had love affairs with the accused and she went with him for roaming on her own will. P.W.3 also supported the version of P.W.4. He made it clear that the ejahar was given against the accused person due to misunderstanding. The evidences of both the witnesses have corroborated with each other.

14. So, the accused is not implicated by the victim and the informant in any manner. Victim was not taken away forcibly by the accused on the date of incident. She went with him on her own sweet will out of love affairs between them and no any bad act was done upon her by the accused person.

15. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Md. Majid Ali @ Sajur Ahmed is held not guilty and he is acquitted of the offence U/S-366 (A) of IPC R/W section 4 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.

16. The case is disposed of.

17. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 28th day of September, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Smti Daibaki Rabha

P.W.2, Dhiren Rabha

P.W.3, Sri Sabin Rabha

P.W.4, Jupitara Rabha

Prosecution Exhibit

Ext.1 -- FIR

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

Special Judge,

Kamrup, Amingaon