

IN THE COURT OF THE SPECIAL JUDGE ::::::: CHIRANG, KAJALGAON.

Special(P) Case No. 06(D)/2018 U/S 366 IPC R/W Section 4 of POCSO Act.

State of Assam Vs. Sri Prasanta Ray @ Jaydhar RayAccused

PRESENT:

Sri D.J. Mahanta, Special Judge,

Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Md. N.I. Siddique, Ld. Advocate

Date of Evidence : 20.04.18, 04.05.18, 18.07.18

06.08.18, 07.08.18

Date of Argument: 06.09.2018

Date of Judgment: 18.09.2018

JUDGMENT

The prosecution case in brief is that on 18.12.2017, the informant Subhash Das lodged an FIR before Dhaligaon P.S. alleging that on 07.12.2017 at about 3 P.M., accused Prasanta Ray, taking advantage of absence of other members in the house, called Miss 'X' (name is withheld), 15 years old daughter of the informant and a student of Class VIII of Chaprakata M.E. School over phone to Chaprakata Market and took her to the house of one Nakul Ray of Amguri, Abhayapuri, uncle of the accused and committed rape on the victim there at night. It was alleged that on the next day, the accused took the victim to his sister's house at Kabaitari, Jogighopa and took shelter thereon for the night and thereafter, his sister took the accused and victim to his house for handing over them to his parents but the father of the accused drove away the accused and victim. Thereafter, both of them took shelter in the house of one Ratan Sarkar, the maternal uncle of the accused at Dongsapara for five days.

2. After receiving the FIR, the O/C of Dhaligaon P.S. registered a case being numbered as Dhaligaon P.S. Case No. 252/17 U/S 376 IPC R/W Section 4 of POCSO Act and entrusted ASI Sankar Patgiri to take pre-step and entrusted S.I. Bhaben Das to complete the investigation of the case. Accordingly, the Investigating Officer arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C, collected the medical report and after completion of investigation, SI Surajit Sarkar submitted charge-sheet against the accused Prasanta Ray @ Jaydhar Ray U/S 6 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused person was produced from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, formal charge U/S 366 IPC read with Section 4 of POCSO Act was framed against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail after framing charge.

3. In support of the case prosecution side examined as many as 10 (ten) witnesses.

Following witnesses were examined:-

- (1) Victim Miss 'X' (name is withheld) as PW 1
- (2) Sri Subhash Das as PW 2
- (3) Smt. Sabitri Bala Das as PW 3
- (4) Sri Chandan Kr. Das as PW 4
- (5) Smt. Reba Bati Das as PW 5
- (6) Sri Boloram Das as PW 6

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- (7) Smt. Kalyani Das as PW 7
- (8) Sri Babu Arjya as PW 8
- (9) Dr. Meena Hazarika (M.O.) as PW 9
- (10) ASI Sankar Patgiri (I.O.) as PW 10
- 4. FIR was exhibited as Ext. 1. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext. 2. Medical report was exhibited as Ext.3. Seizure list was exhibited as Ext.4, sketch map was exhibited as Ext.5 and charge-sheet was exhibited as Ext.6. School certificate of the victim was exhibited as Material Ext.1.
- 5. Defence plea is of total denial. Statement of accused was recorded u/s 313 Cr.P.C. Defence adduced no evidence.
- 6. Heard argument from both sides. I have perused the entire evidence on record. I have also considered the statement of the accused recorded u/s 313 Cr.P.C. I have also perused the case law supplied by learned defence counsel.

POINTS FOR CONSIDERATION:-

For the offence U/S 366 of IPC

1. Whether on 07.12.2017, at Khusulupara under Dhaligaon P.S., the accused kidnapped Miss 'X' (name is withheld), minor daughter of the informant from her home and induced her to illicit intercourse with him?

For the offence U/S 4 of POCSO Act

2. Whether on 07.12.2017, at Khusulupara under Dhaligaon P.S., the accused kidnapped Miss 'X' (name is withheld), minor daughter of the informant and took her to Amguri and committed penetrative sexual assault upon her?

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7.

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 8. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned both points simultaneously for the sake of convenience.
- 9. The allegation leveled in FIR against the accused is that he induced the victim girl to go with him and after that he committed sexual intercourse with her for which charge-sheet was filed against him U/S 376 IPC R/W Section 6 of POCSO Act. Charge was framed U/S 366 IPC R/W Section 4 of POCSO Act.
- 10. PW 1 is the victim, who deposed that she met the accused prior to the incident and on the date of occurrence, at about 3.00 P.M., accused called her with a promise to marry. Both of them went to Abhayapuri and stayed in the house of one Nakul Ray, paternal uncle of the accused. On next day, accused took her to his maternal uncle. During her stay in the house of the maternal uncle of the accused, the later committed sexual intercourse with her. She further deposed that when she was taken in a Maruti vehicle, on the way, the accused committed sexual intercourse with her within a jungle. She further deposed that accused took her to maternal uncle as well as her paternal aunt. On the way, he committed sexual intercourse. This witness stated before this Court that during the time of investigation, she had given a statement before the Magistrate which was exhibited as Ext.2. I have gone through her statement recorded U/S 164 Cr.P.C. In her said statement, victim stated that on 07.12.17, accused asked her to come to Chaprakata Bazar from where they went to Abhayapuri. They stayed in the house of the paternal grandfather of the accused. On next day, they stayed at the house of the sister of the accused situated at Kabaitari. After that she was taken to the house of the accused. She further stated that when she stayed with the accused, the later made physical relation with her forcefully. She did not state the place specifically on which the accused committed sexual intercourse with her. On the other hand, she stated before this Court that accused committed sexual intercourse in different places. In this regard, mother of the victim was examined as PW 3, who deposed that accused committed sexual intercourse

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when they were staying in the house of the friend of the accused. The victim did not state before the Magistrate as well as before this Court that they had stayed in the house of any friend of the accused. PW 1 deposed that she told entire incident to her mother (PW 3) but her mother deposed that accused and victim stayed in the house of the friend of the accused. So, evidence given by PW 3 is not believable.

11. PW 2 is the father of the victim, who lodged the FIR. This witness stated that at the time of occurrence, age of the victim was about 15 years. Accused often visited their house prior to the incident. He knew from the villagers that accused took his daughter and they stayed in the house of the maternal uncle of the accused namely, Ratan Sarkar. His daughter informed him that she went with the accused to the house of Ratan Sarkar. According to PW 2, victim did not state what was done by accused during their stay in the house of Ratan Sarkar. From the evidence of PW 2, it is found that nothing was stated by PW 1 regarding sexual intercourse as committed by accused to the informant. During the cross-examination, victim clearly stated that there was love affection between her and accused. She further deposed that accused touched her private part over 'salwar'. PW 3, during her cross-examination, stated that she could not recollect the date of birth of the victim. She exhibited the certificate issued by Headmaster, Chaprakata M.V. School as Material Ext.1. I have gone through the said document. It is found that certificate was issued after the date of incident. This fact was confirmed by the I.O. (PW 10). During his cross-examination, I.O. deposed that occurrence took place on 07.12.17 and FIR was lodged on 18.12.17 and Material Ext.1 was issued by the School authority on 20.12.2017.

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- 12. Medical Officer was examined as PW 9. She deposed that radiological examination was advised but not done by the party. From the clinical observation, age of the victim could not be determined.
- 13. PW 8 is the brother-in-law of the victim. He deposed that at the time of occurrence, age of the victim was about 15 to 16 years. She was reading in Class IX and she failed two times in lower classes. According to PW 8, there was love affection between the accused and victim. On the date of

occurrence, victim left her house silently without informing anyone. On the date of occurrence, at night, son of the maternal uncle of the accused informed the father of the victim that victim was residing with the accused at Abhayapuri in the house of the uncle of the accused. On next day, accused and victim took shelter in the house of the maternal uncle of the accused. PW 8 met the victim in the house of Ratan Sarkar, the maternal uncle of the accused. Then victim told him that she came with the accused as she loved him. According to PW 8, at present, accused married the victim and both of them are living together as husband and wife. He clearly stated that age of the victim was above 17 years and she eloped with the accused according to her own will. He further deposed that parents of the victim tried to marry her with the accused but guardian of accused was not agreed for which case was lodged.

- 14. PW 4, PW 5 and PW 6 heard about the incident. These witnesses clearly stated that there was love affection between the accused and victim and victim eloped with the accused.
- 15. PW 7 Kalyani Das stated that on the date of occurrence, victim was missing for which her mother came to her home and searched the victim. She also searched different places. On the night of missing, son of Ratan Sarkar told her that the victim was residing with the accused. This witness also stated that guardian of the accused did not accept the relationship. As guardian of the accused did not allow the victim and accused to stay in their home for which they took shelter in the house of Ratan Sarkar, maternal uncle of the accused.
- 16. I.O. was examined as PW 10, who deposed that he seized school certificate which was issued by Headmaster, M.V. School but he did not visit the L.P. School in which victim first started her study. He did not determine the age of the victim either radiological examination or by any inquiry.
- 17. After going through the entire evidence on record, I have found that age of the victim was not ascertained during the time of investigation.

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Material Ext.1 is nothing but a certificate issued by Headmaster of M.V. School after the date of occurrence. No any birth certificate or school certificate from L.P. School was collected by the I.O. So, age of the victim was not properly determined by the I.O. Radiological examination was also not done during the time of medical examination. Therefore, doctor could not opine about the age of the victim. PW 8 deposed that age of the victim was about 17 years. The victim herself stated different story regarding alleged sexual intercourse. She stated that accused committed sexual intercourse on the way within the jungle but this fact was not stated by her before the Magistrate when she gave statement U/S 164 Cr.P.C. During the cross-examination, victim stated that accused touched her private part only over 'salwar'. So, victim exaggerated the story by stating that accused committed sexual intercourse in different places. The informant did not know whether accused committed any sexual intercourse with his daughter or not. Mother also stated a different story that accused committed sexual intercourse with the victim in the house of the friend of the accused but it was not revealed from the evidence of the victim that she stayed with the accused in his friend's house. PW 8 stated that victim went with the accused according to her own will and due to love affection; they stayed in the house of maternal uncle of the accused. It is also revealed that during trial accused married the victim and both of them have been living together as husband and wife. To attract section 4 of POCSO Act, prosecution must have to prove the penetrative sexual assault committed by accused. In present case at hand, it is not proved beyond doubt that accused committed sexual intercourse with the victim in any particular place. On the other hand, it is found that victim went with the accused according to her own will. She came from her home to Chaprakata as stated by her before the Magistrate. It is not proved that accused called her over telephone. Investigating Officer did not collect any call details report at relevant point of time in between the accused and victim. No any ocular evidence was found in this regard. This fact was not stated specifically by the victim during her statement before the Magistrate. It is found from entire evidence on record that due to love affairs accused and victim took shelter in different places and family members of the accused did not allow the accused to marry the victim. On the other hand, as stated by PW 8, family members of the victim tried to

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marry her with the accused. As marriage was not performed for which this FIR was lodged by the PW 2 after 3 days. This delay reflects that he knew that due to love affairs his daughter eloped with the accused. This also reflected from the subsequent conduct of the victim. At present, victim is living with the accused as husband and wife. So, criminal intention or mens rea as required to attract any criminal offence, on the part of the accused is not proved in this case. Therefore, accused cannot be booked for the offences mentioned above. Ingredient of section 366 IPC is not proved. It is also not proved that accused committed sexual intercourse with the victim. So, both points mentioned above are remained as not proved. Accused is not found guilty.

ORDER

- 18. Prosecution failed to prove the case U/S 366 IPC R/W Section 4 of POCSO Act against accused Sri Prasanta Ray @ Jaydhar Ray. Accused is acquitted and set at liberty. He is directed to furnish bail bond of Rs. 10,000/-with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, he is allowed to remain in previous bail.
- 19. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.
- 20. Given under my sign and seal of this Court on this the 18th day of September, 2018, at Kajalgaon, Chirang.

(D.J. Mahanta)
Special Judge,

Chirangalgaon

Dictated and corrected by me,

(D.J. Mahanta)

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APPENDIX

Prosecution witness:

- PW 1 Victim Miss 'X' (name is withheld)
- PW 2 Sri Subhash Das
- PW 3 Smt. Sabitri Bala Das
- PW 4 Sri Chandan Kr. Das
- PW 5 Smt. Reba Bati Das
- PW 6 Sri Boloram Das
- PW 7 Smt. Kalyani Das
- PW 8 Sri Babu Arjya
- PW 9 Dr. Meena Hazarika (M.O.)
- PW 10 ASI Sankar Patgiri (I.O.)

Exhibit (Prosecution):

- Ext-1 FIR
- Ext-2 Statement of the victim U/S 164 Cr.P.C.
- Ext-3 Medical report
- Ext-4 Seizure list
- Ext-5 Sketch map
- Ext-6 Charge-sheet

Material Exhibit (Prosecution):

Material Ext-1 School certificate of the victim

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta) Special Judge,

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