

IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI

Special (T 1) (POCSO) Case No. 01/2018,
U/S - 376 of the IPC read with Sec. 4 of POCSO Act

State

- Versus -

Siddique Ahmed Mazumder @ Safar Ali Accused.

PRESENT:- Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State	: - Sri U.K. Das, Ld. Public Prosecutor.
For the accused person	: - Sri A.H. Laskar, Ld. Advocate.

Dates of recording evidence	: - 21.07.2018.
Date of recording statement u/s 313, CrPC	: - 23.07.2018.
Date of Argument	: - 23.07.2018.
Date of Judgment	: - 23.07.2018.

JUDGMENT

The prosecution case, in brief, is that on 22.08.2017 the informant Manik Uddin Mazumder lodged an ejahar with the O/c, Hailakandi Police Station alleging that in the intervening night of 21.08.2017 and 22.08.2017 at about 1 AM while his minor daughter, the victim, went out to attend nature's call, the accused person Sadik Ahmed Mazumder @ Safar Ali by gagging her mouth took her to a lonely place and committed rape on her and after committing rape, the accused left the place.

D
23.07.18
SPECIAL JUDGE
HAILAKANDI

Contd....P/2.

Special (T 1) (POCSO) Case No. 01/2018.

- 2 -

2. On receipt of the ejahar, the same was registered as Hailakandi Police Station Case No. 511/2017 under Sec. 4 of the POCSO Act and accordingly, police started investigation of the case.
3. During investigation, police visited the place of occurrence, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Sadik Ahmed Mazumder @ Safar Ali under Sec. 4 of the POCSO Act, 2012.
4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
5. After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Siddique Ahmed Mazumder @ Safar Ali under Sec. 376 of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
6. In the instant case, the prosecution has examined 2 Nos. of Pws including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was

Contd....P/3.

[Handwritten Signature]
SPECIAL JUDGE
HAILAKANDI

Special (T 1) (POCSO) Case No. 01/2018.

- 3 -

closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

7. Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION :-

- (i) Whether the accused person in the intervening night of 21.8.2017 and 22.8.2017 at about 1.30 AM committed rape upon the victim, daughter of the informant, as alleged ?
- (ii) Whether the accused on the aforesaid day, time and place committed penetrative sexual assault on the victim, as alleged ?

DISCUSSION, REASONS AND DECISION THEREOF :-

8. The PW. 1, informant Manik Uddin Mazumder has deposed that in the year 2017 at one night at about 2 AM while he was sleeping. his daughter viz. the victim, went out to attend nature's call, the accused forcefully kidnapped her and taking her near his house committed rape on her. Thereafter, he lodged the Ejahar, Ext. 1 and Ext. 1(1) is his signature. He has further stated that the victim was aged 16 years at the relevant time.

In cross examination, the informant has stated that he had given the marriage of the victim with the accused and at present she is residing with the accused as his wife happily. The victim had love affair with the accused. It is further

23.07.18
SPECIAL JUDGE
HAILAKANDI

Contd....P/4.

Special (T 1) (POCSO) Case No. 01/2018.

- 4 -

stated by the informant that he can not say the exact date of birth of the victim and he has got no allegation against the accused.

9. The PW.2, the victim, has stated that she had

love affair with the accused and on the relevant night, she went with the accused on her own will without informing her father and as such, her father filed the case. But subsequently, her father gave her marriage with the accused and at present, she is living with the accused happily as his wife. Police got her medically examined and she also made statement before Magistrate, which is Ext. 2 and Exts. 2(1) and 2(2) are her signatures therein.

In cross examination, the victim has stated that on being influenced by her parents, she made statement before Magistrate and she can not say the exact date of her birth.

In the backdrop of above evidence, at the very outset, the age of the victim girl is to be determined. The informant has stated in his evidence in chief that at the relevant time, his daughter was aged about 16 years old but in cross examination, he has stated that he can not say her exact date of birth, which suggests that the PW. 1 is not sure about the age of the victim at the relevant time. The victim has stated that she can not say her date of birth but on the date of deposition, she has stated that her age is about 17 years. When a witness uses the word 'about' in respect of age, it implies that it may be more or less. Therefore, it can not be said that at the time of incident, the victim was aged 17 years or 16 years, it may be more than 16 or 17 years. Further, from the medical report available on

Contd....P/5.

22. 02.18
SPECIAL JUDGE
HAILAKANDI

Special (T 1) (POCSO) Case No. 01/2018.

- 5 -

record, it is revealed that her radiological age is above 16 years and below 18 years. The proposition of law is settled that the margin of error in radiological age is 2 years in either side. Therefore, considering all aspects, it can be presumed that at the relevant time, the victim was a major girl.

10. In the instant case, the prime witness is the victim and her evidence bears much significance to prove the alleged commission of the offence by the accused. The victim was major at the relevant time and in her evidence she has unequivocally divulged that at the relevant time, she went with the accused on her own will without informing her father and as such, her father lodged the case but subsequently, her father gave her marriage with the accused and at present, she is living with the accused happily as his wife and it appears that the victim being major was a consenting party and accordingly, she went with the accused. Though the victim in her statement, Ext. 2, recorded under Sec. 164, CrPC implicated the accused person in the commission of the crime but in her evidence, the victim has stated that on being influenced by her parents, she made statement before Magistrate.

11. Though the informant has implicated the accused in his evidence in chief to some extent but in his cross examination, keeping himself on the same footing, he has stated that he has given marriage of the victim with the accused and at present she is living with the accused peacefully and he has got no allegation against the accused.

12. When the victim as well as her father, the

Contd....P/6.

✓
21.07.18
SPECIAL JUDGE
HAILAKANDI

Special (T 1) (POCSO) Case No. 01/2018.

- 6 -

informant, has not implicated the accused person in their evidence with the commission of the alleged crime and since the victim being major went with the accused at the relevant time and is presently leading her conjugal life with the accused happily as his wife, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.

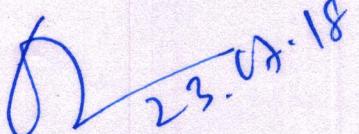
13. Accordingly, the accused person Siddique Ahmed Mazumder @ Safar Ali is acquitted of the offence under Sec. 376, IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.

14. The bail bond of the accused person stands discharged.

15. Send a copy of this judgment to the District Magistrate, Hailakandi.

16. The Special (POCSO) case is disposed of accordingly.

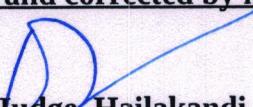
17. Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 23rd day of July, 2018.


Special Judge, Hailakandi.

SPECIAL JUDGE

HAILAKANDI

Dictated and corrected by me :-


Special Judge, Hailakandi.

SPECIAL JUDGE

HAILAKANDI

Dictation is taken and transcribed by Baharul Islam Choudhury.

Stenographer Grade I.

Contd.....P/7.

-7-

Appendix :-

Oral evidences :-

PW. 1, Manik Uddin Mazumder.

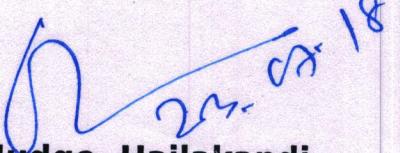
PW. 2, The victim.

Documentary evidences :-

Ext. 1- Ejahar.

Ext. 2- Statement of the victim under Sec. 164, CrPC.

Defence did not adduce any evidence.


Special Judge, Hailakandi.
SPECIAL JUDGE
HAILAKANDI