IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.74/2018.

Under Section - 366 IPC and under Section 4 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Md. Atabur Rahman. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. Bulumoni Das, Advocate. ... For the Accused.

Date of framing of charge. : 04.09.2018.

Dates of taking evidence. : 02.03.2019, 25.03.2019, 03.07.2019,

06.08.2019 and 01.10.2019.

Date of hearing Argument. : 03.10.2019.

Date of delivery of Judgment. : 03.10.2019.

JUDGMENT

1. The case of the prosecution side may, in brief, be described thus :

On 15.02.2018, the informant, Md. Nurul Islam lodged an ejahar with Bangalmara Police Out Post under Bihpuria Police Station to the effect that the victim X, a minor girl aged about 13 years is his younger sister. On 13.02.2018 at about 5.30 pm, the victim X was

found missing from his house. In the ejahar, it is stated that some one had kidnapped his younger sister victim X from his house. He searched for his sister victim X, but could not find her.

- 2. On receiving the ejahar, the In-charge of Bangalmara Police Out Post made GD entry of the same vide Bangalmara Police Out Post GD Entry No.251 dtd. 15.02.2018 and forwarded the same to the Officer-in-charge of Bihpuria Police Station for registering a case under proper sections of Law. On receiving the ejahar, the Officer-in-charge of Bihpuria Police Station registered a case vide Bihpuria P.S. Case No.71/2018 under Section 366(A) IPC.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared the sketch map of the place of occurrence. The I.O. recovered the victim X and got her medically examined by the doctor at North Lakhimpur Civil Hospital. Thereafter, the I.O. got the statement of the victim X recorded u/s 164 CrPC in the court. The I.O. arrested the accused, Md. Atabur Rahman and forwarded him before the court. The I.O. recorded the statements of the witnesses u/s 161 CrPC. The I.O. after completion of investigation of the case on being found sufficient incriminating materials against the accused, Md. Atabur Rahman under Section 366(A) IPC RW Section 4 of the POCSO Act, submitted the charge-sheet against the accused, Md. Atabur Rahman under Section 366(A) IPC and under Section 4 of the POCSO Act.
- 4. The accused, Md. Atabur Rahman made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the accused, Md. Atabur Rahman under Section 366 IPC and under Section 4 of the POCSO Act in the case record, the charges under Section 366 IPC and under Section 4 of the POCSO Act had been

framed against the accused, Md. Atabur Rahman. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 5. In course of trial, the prosecution side examined 6 (six) witnesses.
- 6. The statement of the accused person was recorded u/s 313 CrPC. The accused person in his aforesaid statement recorded u/s 313 CrPC denied the commission of any offence.
- 7. The accused person led no evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Md. Atabur Rahman on 13.02.2018 at about 5.30 pm at night at village, Daulatpur under Bihpuria Police Station, Dist. Lakhimpur, kidnapped the victim X, a minor girl above the age of 12 years with intent that she might be compelled or knowing it to be likely that she would be compelled to marry the accused person or that she might be forced or seduced to illicit intercourse with him?
- (II) Whether the accused, Md. Atabur Rahman after kidnapping the victim X, a minor girl above the age of 12 years, committed penetrative sexual assault on her person?

DECISION AND REASONS THEREOF

11. PW.1 is the victim X. PW.1, the victim X in her evidence stated that the informant, Md. Nurul Islam is her elder brother. She knows the accused, Md. Atabur Rahman. The house of the accused, Md. Atabur Rahman is situated in her village. According to her evidence, the occurrence had taken place about 1 (one) year back. On the date of occurrence, her mother had rebuked her. Then, she went to the house of her aunt situated at Karunabari without informing her mother and other family members. After 2 (two) days while she was in the house of her aunt, she came to know that a case had been filed with Police Station regarding her missing. Then, she came back to her house and stated to her mother that no one had kidnapped her and she had gone to the house of her aunt. According to her evidence, the accused person neither kidnapped her nor performed any sexual intercourse with her. According to her evidence, the police had taken her into the Police Station from her house and then took her to North Lakhimpur Civil Hospital and got her medically examined.

This is the evidence adduced by PW.1, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

12. PW.2, Md. Nurul Islam is the informant of the case as well as elder brother of the victim X. PW.2, Md. Nurul Islam stated in his evidence stated that he knows the accused, Md. Atabur Rahman, whose house is situated at Ahmedpur, which is adjacent to their village. According to his evidence, the occurrence had taken place about 1 (one) year back. At the time of occurrence, he was not in the house, he was in Arunachal Pradesh. On the following day of the occurrence, he came to his house from Arunachal Pradesh. Then, he came to know from his mother, Musstt. Halima Khatun that the victim X had left the house on the previous day. Then, he searched for the victim X, but could not find her. Thereafter, he lodged the ejahar with

Bangalmara Police Out Post. According to his evidence, on the following day of filing of the ejahar, the victim X returned back to his house. Then, the victim X had stated that she had gone to the house of her aunt situated at Karunabari as her mother had abused her. He in his evidence stated that the victim X had stated to him that the accused person had neither kidnapped her nor performed any sexual intercourse with her.

This is the evidence adduced by PW.2, Md. Nurul Islam, the elder brother of the victim X as well as informant of the case. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

13. PW.3, Md. Kasem Ali in his evidence stated that he knows the accused, Md. Atabur Rahman, whose house is situated about 1 ½ km away from his house in the same village. He in his evidence stated that he knows the informant, Md. Nurul Islam, whose house is situated nearby his house. He in his evidence stated that he knows the victim X, who is the sister of the informant, Md. Nurul Islam. He in his evidence stated that he did not know anything regarding the occurrence.

14. PW.4, Md. Nur Jamal in his evidence stated that he knows the accused, Md. Atabur Rahman. The house of the accused, Md. Atabur Rahman is situated in the village which is adjacent to his village. He in his evidence stated that he knows the victim X. The house of the victim X is situated about ½ km away from his house. He in his evidence stated that he knows the informant, Md. Nurul Islam, who is the elder brother of the victim X. According to his evidence, the occurrence had taken place about 1 (one) year back. At the time of occurrence, he was not in his house. He had gone to Barpeta. After about 1 (one) week from the date of occurrence, he came back to his house. Then, he came to know from Md. Ziaur Rahman, whose house is situated nearby the house of the informant, Md. Nurul Islam that the

victim X was missing from her house and thereafter, she had returned back to her house. He in his evidence stated that he did not know who had kidnapped the victim X. He did not know anything regarding the occurrence of this case.

This is the evidence adduced by PW.4, Md. Nur Jamal. There is no any incriminating material in his evidence against the accused person regarding commission of any offence.

- 15. PW.6 is SI Lakheswar Handique, who is the Investigating Officer of the case, who had investigated the case and thereafter, submitted the charge-sheet in the case against the accused, Md. Atabur Rahman. He in his evidence stated that as per information of the reliable source, he recovered the victim X from the house of the accused, Md. Atabur Rahman. He in his evidence stated that when he recovered the victim X from the house of the accused, Md. Atabur Rahman, he did not find the accused, Md.Atabur Rahman in his house. He found other village people in the house. But, the victim X in her evidence stated that the police had taken her into the Police Station from her house and thereafter, forwarded her to North Lakhimpur Civil Hospital to get her medically examined.
- 16. The accused, Md. Atabur Rahman in his statement recorded u/s 313 CrPC denied that the victim X had been recovered from his house.
- 17. PW.5, Dr. Moromi Kalita is the Medical Officer of the case. In view of the discussion of the evidence adduced by the prosecution witnesses made here-in-above, I find it redundant to discuss the evidence of the M.O., PW.5, Dr. Moromi Kalita.
- 18. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Section 366 IPC and under

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Section 4 of the POCSO Act brought against the accused, Md. Atabur Rahman. The accused person deserves to be acquitted.

- 19. I, therefore, hold the accused, Md. Atabur Rahman not guilty and acquit him from the charges under Section 366 IPC and under Section 4 of the POCSO Act. The accused person is set at his liberty forthwith.
- 20. The bail bond of the accused person is cancelled and his surety is discharged.
- 21. Given under my hand and seal of this court on this the 3rd day of October, 2019.

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Victim X.

PW.2 – Md. Nurul Islam, the elder brother of the victim X as well as informant of the case.

PW.3 - Md. Kasem Ali.

PW.4 - Md. Nur Jamal.

PW.5 - Dr. Moromi Kalita, the M.O. of the case.

PW.6 - SI Lakheswar Handique, the I.O. of the case.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

3. DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE:

Ext.1 - Statement of the victim X recorded u/s 164 CrPC.

Ext.2 - Ejahar.

Ext.3 - Medical Examination Report.

Ext.4 - Sketch map of the place of occurrence.

Ext.5 - Charge-sheet.

4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>:

Nil.

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.