IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 24/2018

State of Assam

-Vs-

1. Bhagaban Rajan.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused : Mr. Bhaskar Jyoti Sharma, Learned Advocate.

Date of Evidence : 29-10-18: 09-11-18.

Date of Argument : 12-11-18.

Date of Judgment : 15-11-18.

JUDGMENT

- 1. The prosecution case in brief is that on 16-05-17, informant Kartik Tanti lodged an FIR with the Officer-in-Charge of Harisinga P.S. alleging that on 13-05-17, at about 07.00 pm his 17 years old daughter, victim-A went missing from home. On search the informant came to know that the accused took the victim by inducing her to work outside Assam.
- On the basis of the FIR, Harisinga PS Case No. 25/17, U/S 366-A IPC, was registered. Later on, Section 4 of POCSO Act was added into the case. After completion of investigation Police submitted charge-sheet U/S 366

IPC, R/W Section 4 of POCSO Act against the accused person Bhagaban Rajan.

- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offences under Section 366-A I.P.C., R/W Section 4 of POCSO Act, learned Special Judge framed charges there under and the ingredients of charges under Section 366-A I.P.C., R/W Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. The learned Sessions Judge vide Order dated 10-10-2018, transferred the case to this court for disposal.
- 5. The prosecution in order to prove its case examined the following 3(three) witnesses:

PW1- Kartik Tanti.

PW2- Victim-A.

PW3- Dr. Amit Rajbongshi.

- 6. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
- 7. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused person induced Victim-A who is a minor girl under the age of 18 years to go with him to another place with intent that she may forced or seduced to illicit intercourse with him and thereby committed an offence punishable under Section 366-A IPC ?

(II) Whether the accused person committed sexual assault on Victim-A and thereby committed an offence punishable under Section 4 of POCSO Act ?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defense counsel Mr. Bhaskar Jyoti Sharma. Learned defence counsel has argued that the ingredients of Section 366-A I.P.C., R/W Section 4 of POCSO Act have not been established in the present case against the accused person.
- 9. I have gone through the evidences on record. The prosecution to prove its case examined 3(three) witnesses, PW1 is Kartik Tanti, the informant of the case. Victim is his daughter. On 13-05-2017, his daughter/victim went missing from home. Then he lodged FIR before the Police on 16-05-2017, and after about 20 days he came to knew that she had gone to Chennai along with accused Bhagaban Rajan. Then he brought her back home from Chennai. Now she had been living in his house. At the time of incident his daughter was aged about 18 years. Ext-1 is the FIR and Ext-1(1) is the signature of PW1. In cross-examination PW1 had revealed that the victim told him that on her own volition she went to Chennai along with the accused.
- 10. PW2 is Victim-A. PW2 had deposed in her evidence that about 1 year back she went to Chennai along with accused Bhagavan Rajan. In Chennai she fell sick and informed her parents over phone. Then her father went there and brought her back home. Thereafter she was produced before the Court by Police and her statement was recorded by the Magistrate. Ext-2 is her statement and Ext-2(1) is the signature of PW2. The Police had also produced her before the doctor for medical examination. PW2 had deposed that at the time of incident she was 18 years old. In cross-examination

PW2 had revealed that she voluntarily went with the accused as she had love affairs with him. PW2 also stated that the accused did not forcibly take her away.

- 11. PW3 Dr. Amit Rajbongshi. On 31-07-2017, he was posted as M& HO 1 at Udalguri Civil Hospital. On that day at 12.30 pm, he examined the victim and on her examination he found the age of the victim approximately 17-18 (seventeen to eighteen) years. PW 3 had deposed that as the victim refused to undergo sexual examination, therefore, smear examination was not done. Ext-3 is his report and Ext-3(1) is his signature. Crossexamination of PW3 had been declined by the defence.
- 12. On appraisal of evidence on record it appears that there is no incriminating evidence against the accused person. PW1, the informant & PW2, the victim, who are the principal and material witnesses of the case, have not adduced evidence implicating the accused persons. PW1 has deposed that when her daughter Victim-A went on missing he lodged the FIR. Later on, PW1, after about 20 days came to knew that she had gone to Chennai along with accused Bhagaban Rajan. Then he brought her back home from Chennai and now she had been living in his house. In cross-examination PW1 had revealed that the victim told him that on her own volition she went to Chennai along with the accused. On the other hand PW2, in crossexamination revealed that she voluntarily went with the accused as she had love affairs with him. PW2 also stated that the accused did not forcibly take her away. With regard to age of the victim it appears that victim was major at the time of occurrence as revealed by her father PW1 in his crossexamination. Also PW3, the Doctor had opined that approximate age of the victim was 17-18 years of age.
- 13. In view of above discussion it appears that the prosecution has failed to establish the charges under Section 366-A I.P.C., R/W Section 4 of POCSO Act against the accused person.

14. Situated thus the points for determination are decided in the negative and against the prosecution.

<u>ORDER</u>

- 15. In the result, the accused person Bhagaban Rajan is found not guilty under Section 366-A I.P.C., R/W Section 4 of POCSO Act and acquitted of charges under Section 366-A I.P.C., R/W Section 4 of POCSO Act and set with liberty forthwith.
- 16. Judgment signed, delivered and pronounced in the open court today the 15th day of November, 2018.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::::::UDALGURI. Special (POCSO) 24/2018 APPENDIX

(A) Prosecution Exhibits :

Ext.-1- FIR.

Ext.-2- Statement of PW2(victim-A)

Ext.-3- Medical Report.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Kartik Tanti.

PW2- Victim-A.

PW3- Dr. Amit Rajbongshi.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri.