IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Spl. Sessions (P) case No.41/2018

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

State of Assam

-Versus-

1. Md. Mofidul Islam

s/o-Md. Pasan Ali

Resident of vill -Majorchar

P.S.-Alopatichar

Dist-Barpeta, Assam

2. Md. Juron Ali

s/o-Lt. Naser Ali

Resident of vill - Bhakhuradia

P.S.-Nagarbera

Dist- Kamrup, Assam

-----Accused

Appearance:

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

Sri M.H. Talukdar, Ld. Advocate ------for the accused persons

Date of evidence: 13.03.2019, 15.03.2019

Date of Argument: 20.03.2019

Date of Judgment: 20.03.2019

JUDGMENT

- The Prosecution case, briefly narrating is that on 16.03.2018 the complainant

 Md. Bakkar Ali lodged an ejahar alleging that on 12.03.2018 at about 9.00 a.m, his minor daughter was taken away by the accused persons from Nagarbera bazar to an unknown place while she was going to her college by riding her bicycle. Hence, this case.
- On the basis of the said ejahar, Nagarbera P.S Case No. 36/18 U/S-366 (A) IPC R/W Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused persons U/S-366 (A) of IPC R/W Section 4 of the POCSO Act, 2012.
- 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 persons— Md. Mofidul Islam and Md. Juron Ali. The aforesaid charges was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined four witnesses including the informant and the victim girl. Statement of the accused persons U/S-313 Cr. P.C are dispensed with as there is no incriminating material against them.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 12.03.2018 at about 9.00 a.m induced the minor victim girl 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, Md. Bakkar Ali is the informant. The prosecutrix (P.W.3) is his daughter. P.W.1 deposed that the occurrence took place about a year ago at about 3.00 p.m. Prosecutrix was 17 years old at the time of occurrence. P.W.1 deposed further that on the relevant day, prosecutrix had gone to college, but she did not return home from college. They were searching for her everywhere. Then one village lady told them that she saw the prosecutrix being taken away in a bike ridden by an unknown boy. Later, P.W.1 came to know that the prosecutrix had gone with the accused—Mohidul @ Mofidul Islam and she was kept in the house of his Uncle—Juron Ali (accused). Thereafter, P.W.1 gave the ejahar. After 13/14 days of the incident, prosecutrix was recovered by police from Mandira while she was standing by the road side. P.W.1 also deposed that after about 4/5 months of the incident, prosecutrix again went away with the accused person by her own will and got married with him. At present they are living together. Ext.1 is the FIR, Ext. 1 (1) is his signature.
- 8. In his cross-examination, P.W.1 has revealed that at present prosecutrix is above 18 years and P.w.1 did not know if prosecutrix went with the accused on her own will on the date of occurrence.
- 9. P.W.2, Nurjahan Nessa has deposed in her evidence that the informant of this case is her husband and the prosecutrix is her daughter. She knows the accused persons. The incident took place about a year ago at about 3.00 p.m. Prosecutrix was 17 years old at the time of occurrence. P.W.2 further stated that on the relevant day prosecutrix had gone to college, but she did not return home. They searched for her everywhere. And after 13/14 days of the incident, prosecutrix was recovered by police. P.W.2 stated that prosecutrix was taken away by the accused—Mohidul @ Mofidul Islam and she was with him. P.W.2 did not know if there was any love affairs between them. Thereafter, her husband (P.W.1) gave the ejahar. P.W.2 also stated that after about 4/5 months of the incident prosecutrix again eloped with the accused person on her own will and got married with him. And at present they are living together.

- 10. In her cross-examination, P.W.2 has disclosed that at present prosecutrix had got married with the accused and they are living together as husband and wife.
- 11. P.W.3, Musstt. Minowara Parbin (prosecutrix) has deposed in her evidence that informant of this case is her father. She knows the accused persons. The incident took place on 12.03.2018 at about 9.00 a.m. P.W.3 has stated that she was 18 years old at the time of occurrence. She had love affair with the accused—Mofidul since 2 years ago. And on the relevant day of the incident, she had gone with the accused on her own will to get married with him. P.W.3 confirmed that accused—Juron Ali is the Uncle of the accused and he did not do anything with her. Thereafter, her father gave the ejahar. P.W.3 deposed further that she was produced before the Magistrate for recording her statement and given in zimma of her parents. Ext.2 is her statement U/S 164 Cr. P.C. Ext. 2 (1&2) are her signatures. She revealed that after seven months of the incident, she again eloped with the accused and got married. At present they are living together peacefully as husband and wife.
- 12. In his cross-examination P.W.3 has revealed that the accused did not forcibly kidnap her on the date of occurrence. She went with him on her own will but her father did not know about her love affair with the accused.
- 13. P.W.4, Md. Jakir Hussain deposed in his evidence that informant of this case is his cousin brother. He knows the accused persons. The incident took place about a year ago. Prosecutrix was 17 years old at the time of occurrence. P.W.4 further deposed that he heard from the informant that on the date of incident while the victim had gone to college, she was taken away by the accused—Mofidul. He did not enquire about the incident from the victim after her recovery. P.W.4 disclosed that he does not know much about the incident.
- 14. Therefore, from the evidence of the prosecutrix (P.W.3) it is clear that she was not a minor at the time of occurrence. She revealed that she attained 18 years of age at the time of occurrence. Further, P.W.3 disclosed that she had love affairs with the accused—Mofidul since 2 years ago and on the day of the incident, she had gone with him on her own will to get married with him. Other P.Ws also supported the version of P.W.3. Her evidence further reveals that after the incident, she was recovered and given in the zimma of her parents but she again eloped with the

accused and got married with him. Perused her statement (Ext.2) wherein she clearly stated before the Magistrate that she had love affair with accused—Mofidul Islam and she fled away with him but the accused persons did not forcibly kidnap her.

- 15. So, the accused persons are not implicated by the victim and the informant in any manner. Victim was not taken away forcibly by the accused persons on the date of incident. She went with the accused—Mofidul Islam on her own sweet will out of love affairs between them. Her evidence reveals that no any bad act was done upon her by the accused persons.
- 16. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused persons. Accordingly, the accused persons— Md. Mofidul Islam and Md. Juron Ali are held not guilty and they are acquitted of the offence U/S-366 (A) of IPC R/W section 4 of the POCSO Act, 2012 and set at liberty forthwith. Their bail bond stands cancelled. Bailor is discharged from their liabilities.
- 17. The case is disposed of.
- 18. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 20th day of March, 2019.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Md. Bakkar Ali

P.W.2, Nurjahan Nessa

P.W.3, Musstt. Minowara Parbin (prosecutrix)

P.W.4, Md. Jakir Hussain

Prosecution Exhibit

Ext.1 -- FIR

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

Special Judge,

Kamrup, Amingaon