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

Kamrup, Amingaon

District:

Present:	Smti. B. Kshetry
	Special Judge,
	Kamrup, Amingaon
	Spl. Sessions (P) case No.04/2018
	U/S-366 (A) IPC R/W section 4 of the POCSO Act
	State of Assam
	-Versus-
	1. Khadim Mullah
	s/o-Ashruf Ali
	Resident of vill –Neuldoba
	P.SBoko
	Dist- Kamrup, Assam
	2. Jahirul Hoque
	s/o-Nuru Seikh
	Resident of vill –Hatisolagaon
	P.SChhaygaon
	Dist- Kamrup, Assam
	Accused
	Appearance:
	Mr. A.K. Baruah. Ld. Addl. Public Prosecutor
	for the State
	Md. A. Mullah and Md. Lal Miyah, Ld. Advocates
	for the accused person

Date of evidence: 30.08.2019, 13.11.2019

Date of Argument: 18.11.2019

Date of Judgment: 18.11.2019

JUDGMENT

 The Prosecution case, briefly narrating is that on 29.05.2014 the complainant – Ajahar Ali lodged an ejahar alleging that on 25.05.2014 at about 9.30 a.m, the accused persons—Khadim Mullah and Jahirul Hoque had taken away his minor daughter from Madrassa school by inducing her and the accused—Khadim Mullah married her before Mahimari Kazi office. Hence, this case.

- On the basis of the said ejahar, Chhaygaon P.S Case No. 177/14 U/S-366 (A) IPC 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— Khadim Mullah and Jahirul Hoque. The aforesaid charges were 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 3 (three) witnesses including the informant and the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating materials against them.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 25.05.2014 at about 9.30 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 3 (three) witnesses.
- 7. P.W.1, Asuruddin has deposed in his evidence that he knows the informant and accused—Jahirul Islam. He also knows the victim. He further deposed that the incident took place 4 years ago. On the relevant day, he was at home. He accompanied the police to the house of accused—Khadim Mullah from whose house the victim was recovered. At the time of recovery of the victim, accused—Khadim Mullah was not present at his house. P.W.1 did not know anything about the incident.
- 8. P.W.2, victim has deposed in her evidence that informant of this case is her father. She knows the accused persons—Khadim Mullah and Jahirul Hoque. She deposed that she was 19 years old at the time of

occurrence. The incident took place in the year 2014 at about 9.30 a.m. At the relevant time, she was going to Madrassa School and on the way, she met the accused—Khadim Mullah and went to his house with him as there was love affairs between them. They got married before the 'Kazi' and stayed together as husband and wife. Then, P.W.2 informed her father over phone regarding their marriage with the accused—Khadim Mullah. Thereafter, her father lodged the ejahar and police brought her from the house of the accused. Accused—Jahirul Hoque was also with the accused—Khadim Mullah when she went with accused—Khadim to his house. Police sent her to GMCH for her medical examination and brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. P.W.2 disclosed further that she deposed before the Magistrate as tutored by village people. Police recorded her statement.

In her cross-examination, P.W.2 revealed that she deposed before the Magistrate and mentioned her age in her statement U/S-164 Cr. P.C as tutored by village people.

9. P.W.3, Azahar Ali is the informant of this case. He knows the accused persons—Khadim Mullah and Jahirul Hoque. Victim is his daughter. He deposed that victim was above 18 years old at the time of occurrence. He further deposed that the incident took place in the year 2014 and on that day, victim went to Madrassa School and from there, she went missing. Later, victim rang and told him that on the relevant day, when she went to school, she met the accused—Khadim Mullah on the way and she went to his house with him as there was love affairs between them. They got married before the 'Kazi'. Thereafter, he came to know that accused is already a married man, so he brought back the victim to his house and lodged the ejahar. P.W.3 did not know at first about the love affairs between the accused and the victim. At present, victim is staying with them.

- 10. P.W.4, P.W.5 and P.W.6 stated that they neither saw the incident nor heard about it.
- 11. Now, from the evidence of the victim (P.W.2) it is clear that she had love affairs with the accused and on the day of the incident, she had gone with him on her own will to get married with him. P.W.2 also stated that they got married before the 'Kazi' and stayed together as husband and wife. Other P.Ws also supported the version of P.W.2. P.W.2 revealed clearly that she deposed before the Magistrate as tutored by village people. Further P.W.2 stated her age to be 19 years at the time of occurrence. Her father (P.W.3) also supported her version and stated her age to be above 18 years at the time of occurrence. So, she was a major at the time of incident and not a 'child' under Section 2 (d) of POCSO Act.
- 12. Now, 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 made it clear that she went with the accused—Khadim Mullah on her own sweet will out of love affairs between them. Her evidence reveals that she had physical relation with the accused with her own consent. So, she is a consenting party to the sexual intercourse that took place between them and was a major at the time of occurrence. So, the offences U/S- 366 (A) of IPC R/W section 4 of the POCSO Act, 2012 are not attracted at all against the accused persons.
- 13. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused persons— Khadim Mullah and Jahirul Hoque. They are held not guilty. They are, hereby,

acquitted of the offences U/S-366 (A) of IPC R/W section 4 of the POCSO Act, 2012 and set at liberty forthwith.

- 14. Their bail bonds shall remain in force for next 6 (six) months U/S-437 (A) Cr. P.C.
- 15. The case is disposed of on contest.
- 16. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 18^{th} day of November, 2019.

Special Judge, Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Asuruddin

P.W.2, victim

P.W.3, Azahar Ali

Special Judge,

Kamrup, Amingaon