IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.3/2017

State of Assam

Versus

Habej Ali Mandal Accused

Present: Smt.Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr. N. Roy (P.P.)

Ld. Advocate for the accused: Mr S. Pahariya,

Evidence recorded on : 14.6.17, 16.8.17, 15.11.17 & 31.5.18

Argument heard on : 21.6.2018

Judgment delivered on: 30.6.2018

J U D G E M E N T

1. The first information report of this case was lodged by the informant SI Jiten Roy before the Officer-in-charge of Kokrajhar PS. stating that on 14.12.15 at about 12 noon the accused Habej Ali Mandal kidnapped the minor daughter Purnima Roy of the informant from the PWD road Dimolgaon High School and confined the minor girl to an unknown place. Thereafter the police recovered the minor girl from Lakhipur police station at Goalpara district. The minor girl was produced before the Magistrate for recording her statement and accordingly her statement under section 164 Cr.P.C. was recorded.

- 2. On receipt of the first information report in Kokrajhar P.S., a case has been registered under Kokrajhar P.S. case No.917/15 under section 366(A)/34 IPC and thereafter added under section 4 POCSO Act and case was endorsed to SI Satyajit Borthakur for investigation. During investigation the I.O. visited the place of occurrence and recorded the statement of the witnesses, medically examined the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 366(A) IPC and under section 4 of the POCSO Act against the accused Habej Ali Mandal. Considering the special nature of the case, the accused was produced before this court and after considerable period in jail hazot my learned Predecessor released the accused on bail. Relevant copies also furnished to the accused and my learned Predecessor framed the charge against the accused under section 366(A) IPC and under section 4 of POCSO Act finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as eight number of witnesses including the informant, victim and M.O. as follows:

PW 1 Dr Sushma Brahma

PW 2 Miss Purnima Roy

PW 3 Sri Jiten Roy

PW4 Sri Dinesh Roy

PW5 Sri Chakrapani Roy

PW6 Smti Sambari Roy

PW 7 Smti Thaneswari Roy

PW8 Sri Ratneswari Roy

4. The defence took the plea of total denial and he has not adduced any evidence in support of their case. Recording the statement of the accused

under section 313 Cr.P.C. is dispensed with as there was no incriminating material against the accused person.

5. **Points for determination:**

- (i)Whether the accused abducted the minor daughter of the informant with an intention to force her for illicit intercourse?
- (ii)Whether the accused committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and hearing arguments from both sides case is decided as follows:-
- 7. PW1 Medical Officer in her evidence stated that she examined the victim Purnima Roy and opined that the age of the victim was above 16 years but below 18 years. No injury mark found on her body and private parts but, it is opined that the victim might have been exposed to sexual intercourse before 72 hours.
- 8. PW2 victim Purnima Roy stated in her evidence that she left the house after quarrelling with her parents. She went to Guwahati alone. Her father filed the case. She also further stated that the accused did not commit rape on her. In cross she stated that she visited the residence of her elder sister in Guwahati.
- 9. PW3 informant Jiten Roy stated in his evidence that his daughter Purnima Roy went on missing from the school on the day of incident. He further stated that he filed the case on suspicion against the accused Habej Ali Mandal. He found his daughter in the house of his elder daughter and also stated that the accused did not kidnap his daughter. In cross he stated that his daughter was about 18 years old at the time of incident.

- 10. PW4 Dinesh Roy stated in his evidence that the victim Purnima Roy is his niece. She went on missing from the school at the time of incident. In cross he stated that the victim Purnima Roy returned home after 11 months and nobody kidnapped her.
- 11. PW5 and PW6 stated in their evidence that they do not know anything about the incident.
- 12. PW7 Smti Thaneswari Roy stated in her evidence that the informant is her husband and the victim is her daughter. Her daughter Purnima went on missing while she was going to school and they suspected that the accused Habej Ali Mondal kidnapped her daughter. Thereafter her daughter was recovered from the house of her cousin sister.
- 13. PW8 Sri Ratneswar Roy stated in his evidence that he does not know the accused personally though he heard his name. He heard that the daughter of the informant went with one Habej Ali Mondal.
- 14. So, from the discussion made above it is seen that there is no eye witness in this case and none of the witnesses have any personal knowledge in commission of the offence by the accused. The victim herself did not support the prosecution case, rather she denied the entire incident as mentioned in the first information report. As per her she went to Guwahati to her elder sister's house by her own. Neither the accused kidnapped or abducted her nor he committed rape on her. As per the informant also he lodged the FIR against the accused only on suspicion or his daughter went on missing. She left their house without informing her parents after a quarrel with her mother (PW7).
- 15. So, from the discussion above it is seen that none of the witnesses brought allegation against the accused in commission of any penetrative sexual assault to the victim or abduction. As per medical report the girl was minor at the time of her examination and she also reported that the victim might have been exposed to sexual intercourse. But, only on the basis of the medical evidence the accused cannot be convicted unless supported by vital witnesses.

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More so the victim herself as well as her father (informant) have stated that at the time of incident she was more than 18 years of age. In view of above it is held that the prosecution could not establish the case against the accused under section 4 of the POCSO Act beyond all reasonable doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.

16. The judgment is delivered in the open court and given under my hand and seal of the court on this 30th June/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar