## IN THE COURT OF ADDL. DIST. & SESSIONS JUDGE (F.T.C.), N.S., ABHAYAPURI

Present:

Shri P. Bora, A.J.S.

Addl. Dist. & Sessions Judge (FTC)

North Salmara, Abhayapuri

## Spl.(P) Case No. 9(A)/ 2017

U/S 342/366(A) I.P.C. R/W Sec.4 of POCSO Act

State of Assam

۷s

### **Appearance**

Smti. R. Choudhury	 Ld. Special P.P. for the State
M. HussainTalukdar	Ld. Defence Counsel
Charge framed on	 11.08.2017
Evidence recorded on	 23.05.2018/06.07.2018/25.07.2018
Argument heard on	 08.08.2018
Judgement Pronounce on	 21.08.2018

# 21.8, 2018,

#### JUDGEMENT

The case for the prosecution in brief is that on 24.04.2017 the informant Smti. Malika Sinha lodged an FIR before the officer-in-Charge of North Salmara Police outpost under Abhayapuri police station alleging intra elia that on 23.04.2017 at about 3 P.M. her sister Smti. Dhanjita Choudhury aged about 15 years was kidnapped by someone on her way to the house of her aunt. I has also been alleged that later on, on 24.04.2017 she came to know that the accused person after inducing her sister kidnapped her sister and kept confined in a room adjacent to "Garo Dukan" and sexually cohabited with her. Hence the case.

- After receiving the said FIR the officer in charge of North Salmara Police Outpost make a GD Entry bearing GDE No. 445/2017 and forwarded the same to the officer-incharge of Abhayapuri Police Station for registering the case. Accordingly after receiving the said FIR the officer-in charge of Abhayapuri Police Station register the same vide Abahaypuri Police Case No. 305/2017. Police has started the investigation. After completion of the investigation, the investigating officer submitted charge sheet against the accused persons u/s 341/366 IPC R/W Section 4 of POCSO Act 2012.
- The Court below after complying the provision of section 207 Cr. P.C. committed the case along with accused persons. Accordingly all the accused persons appeared before court to face the trial. After perusing and considering all the relevant documents referred to u/s 173 Cr.P.C. and considering the submission put forwarded by the Ld. Addl. P.P. for the State as well as Ld. Counsel for defence, finding a prima dv case against the accused persons a formal charge u/s 342/366(A) IPC R/W Section 4 of POCSO Act 2012 framed against all the accused persons and the same on being read over and explained to the accused to which all the accused persons pleaded not guilty and claimed to be tried.
- To bring home the charge against accused persons in this case the prosecution side has examined as many as eight witnesses including the informant and the victim, but defence examined none. The accused person was also examined u/s 313 Cr.P.C. on being so examined the accused person declined to adduce defence evidence and narrated that false evidence has been adduced against him.

# 21.8,20K5

#### POINTS FOR DECISION

- (I) Whether the accused persons on 23.04.2017 at night wrongfully confined Smti. Dhanjita Choudhury for the whole night and thereby committed an offence punishable u/s 342 I.P.C.
- (ii) Whether accused person on 23.04.2017 at about 3 P.M. induced Dhanjita Choudhury, a minor girl under the age of 18 years to go from the road with intend that Said Dhanjita Choudhury be forced to illicit intercourse with other and thereby committed an offence punishable u/s 366 (A) I.P.C., and
- (iii) Whether the accused person on 23.04.2017 at night committed penetrative sexual assault on Dhanjita Choudhury aged about 15 years and thereby committed an offence punishable u/s 4 of POCSO Act 2012

#### **DECISION AND REASON FOR DECISION**

- I have gone carefully through the entire evidence on record and considered the same. I have also heard the arguments put forwarded by the Ld. Counsel for prosecution as well as defence.
- Mr. Talukdar, Ld. Counsel for defence argued that in this case the prosecution side has miserably failed to establish the base and foundation of its case as because prosecution side has failed to clarify the basic foundation on which prosecution case trusted. Pertaining to the contention as raised by the Ld. Counsel for defence, Ld. Counsel for defence drawn the attention of the Court to the oral testimony of PW8, the investigating officer. It is commonly accepted view that in the criminal trial First Information report which is the information about the commission of the offence first in point of time, is the basic foundation of each and every criminal trial. Here the Ld. Counsel for defence submitted that in this case although the prosecution side relied its case on the FIR which is exhibited vide Exhibit 1 but Exhibit 1 the FIR in fact is not the first information about the commission of the offence as alleged as because prior to lodging the FIR already another information was received on which the investigation of this case has been started.
- On this point I have heard and considered the submission put forwarded by the Ld. Counsel for defence as well as Ld. Special P.P. for the state. I have also gone through as well as considered the evidence on record.

≥1.8.20(8.

In this case the prosecution side has examined the informant Smti Monika Sinha as PW3 and exhibited the FIR vide Exhibit 1 and Exhibit 1(1) is the signature of PW3 who is the informant of this case. It also reveals that the prosecution case relied and based its case on Exhibit 1, the FIR, which was registered vide North Salmara O.P. GD entry No.445/17 dated 24.04.2017, which was lodged by PW3. The prosecution side has also examined the investigating officer of this case as PW8. In course of evidence PW8 clearly stated that before receiving the return FIR i.e. Exhibit 1 dated 24.04.2017 on the same day at about 4 A.M. regarding the incident PW8 have also received a telephonic information about the occurrence from Sri Alit Barman which was registered vide G.D. entry No. 436. PW8 during the course of his evidence clearly stated that in the basis of the said GD entry No. 436 he have started the investigation of this case and the investigation of this case was not started on the basis of GD entry No. 445 dated 24.04.2017. It also reveals on the evidence of PW8 that the telephonic information from Alit Barman on the basis of which PW8 make the GD entry bearing GD entry No. 436 was not a cryptic information as because PW8 during the course of his evidence specifically stated that the person who make the telephone has disclose

detail about the case and his identity. Thus, from one angle it appears that the telephonic information make by Sri Alit Barman on the basis of which PW8 (the investigating officer) make the GD entry bearing GD entry No. 436 is the information about the occurrence as alleged first in point of time. Again in this case the said Alit Barman was examined by the prosecution as PW2, but it is strange enough that PW2 is totally silent about the fact regarding the information about the occurrence over telephone. But in this case the prosecution case is rested upon only on the FIR as lodged by Monika Sinha which was registered vide GD entry No.445 and not on the information given by Alit Barman which was registered vide GD entry No. 436, which is the information first in point of time. And the prosecution side has totally failed to wipe out the cloud on this point.

- In this case the prosecution side has examined Sri Manoj Sarma as PW1. It is revealed that from the evidence of the PW1 that about one year back on a day at about 2:30 /3 A.M. in the early morning while he has come out on natures call he heard some noise from a room adjacent to the shop of Alit Barman and after opening the said room he recognised the accused along with a girl. PW1 has failed to disclose the identity of the girl. Like PW1, PW2 Sri Alit Barman in course of evidence stated that about one year back at about 1/1.30 midnight after getting the telephone from PW1 he came and meet PW1. Thereafter, after hearing the noise on a room while they knocked the door of the room the accused person came outside from the room and at that time a girl was found with the accused. Like PW1, PW2 has also failed to disclose the identity of that girl.
- 21.8.2018.11
  - In this case the prosecution side has examined the informant Sri Monika Sinha as PW3 and exhibited the FIR vide Exhibit 1 and Exhibit 1(1) is the signature of PW3. I course of evidence PW3 clearly stated she herself have not written the FIR and did not know the person who has written the FIR. PW3 further stated that neither she herself read out the contents of the FIR nor the contents of the FIR was read over to her by its scriber and hence she did not know what has been written in the FIR. Thus PW3 who is the informant of this case clearly expressed her ignorance about the fact as alleged in the FIR. And in my considered view such kind of ignorance about the fact as alleged in the FIR on the part of the informant herself definitely weaken and reduced the authenticity and credibility of the FIR, which puts the machinery of law into motion. Accordingly on this point benefit goes to defence.
  - In course of evidence PW3 stated that about 1 year back on a day her sister Dhanjita Choudhury along with accused person has gone outside on the occasion of Puja. PW3 further stated that while her sister did not return to her house in time, they

make a search about her sister and on the next day after getting the telephone on the Salmara Police outpost they bring her sister to her house. In course of cross-examination PW3 clearly stated that the accused person is her relative and infact the accused person has taken her sister to observe and see puja festival. PW3 in course of evidence clearly stated that only due to the late night her sister stayed in the house of her friend.

- Now let us discuss and access the evidentiary value of the victim who was examined by the prosecution as PW4. In course of evidence PW4 stated that about one year back on a day she has gone to observe and see the mela along with the accused person and due to late night she stayed in the house of her friend. PW4 further stated that on their return due to rain they take shelter in a shop from where they were caught hold by the police personal. In course of cross-examination PW4 stated that the accused person is her related brother. PW4 further stated that the accused person never commented any sexual abuse or any kind of misdeed with her and she have to stay in the house of her friend only due to the rain. PW4 also stated that she has given her statement before the court as tutored by police and her relatives.
- The prosecution side has examined Sri Damasu Ray, Sri Ranjit Tarafdar and Sri Pranay Roy as PW5, PW6 and PW7 respectively. After perusing and considering the evidence of above named three PWs, the evidence of all the above named three witnesses appears to be totally not helpful to the prosecution as because all the above named witnesses in course of evidence stated that about one year back at about 10.30P.M./12 A.M. they have seen a girl with the accused person near "Garo Dukan". All the above named three witnesses are not only completely silent about the identity of the girl but also about the remaining fact as alleged by the prosecution.
- 15 The above is the thread bear discussion of the evidence on record.

21.8 2018

After perusing and considering the evidence on record it appears that in this case the prosecution side has failed to produce any solid and concrete evidence against the accused person as alleged. In this case, PW3 who is the informant of this case clearly expressed her ignorance about the fact as alleged in the FIR. The oral testimony of PW3 who is the informant of this case also appears to be not in conformity with the fact as alleged in the FIR. None of a single independent witnesses extended any support to the case of the prosecution as alleged. Even the oral testimony of PW3 who is the informant of this case and PW4, the victim extend no any support or corroboration to the prosecution to establish the offence as labelled against accused person.

- In the ultimate analysis on the light of above discussion I hold that in this case the prosecution side has totally failed to establish and prove its case as labelled against the accused person beyond all reasonable doubt. And hence the Court have no alternative but to acquit the accused person from the charges as labelled against him.
- 18 I therefore acquit the accused person from the charges as labelled against him. I also release the accused person from liability of bail bond and set him at liberty.
- 19 Given under my hand and seal of this court on this 21st day of August 2018.

Dictated and corrected by me

Addl district & Sessions Judge (FTC)

North salmara, Abhayapuri

Addl district & Sessions Judge (FTC)
North salmara, Abhayapuri

### **APPENDIX**

1. Prosecution Exhibits

Exhibit 1

FIR

Exhibit 1(1)

Signature of PW3

Exhibit 2

Charge sheet

Exhibit 2(1)

Signature of PW8

2. Material Exhibit by prosecution NIL

3. Defence Exhibits

NIL

4. Prosecution Witnesses

PW1

Sri Manoj Sarma

PW2

Sri Alit Barman

PW3

Smti Monika Sinha, the informant

PW4

Smti Dhanjita Choudhury, the victim

PW5

Sri Damasu Roy

PW<sub>6</sub>

Sri Ranjit Tarafdar

PW7

Sri Pranay Roy

PW8

Sri Deepak Saikia, the I.O.

5. <u>Defence Witnesses</u>

NIL

6. Court Witnesses

NIL

Addl. District & Sessions Judge (FTC)
North Salmara, Abhayapuri