DISTRICT: DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri T. Kalita,

Special Judge, Dhubri

Special Case No. 05 OF 2016

<u>U/S 8 of POCSO Act, R/w Section 366-A IPC</u> Corresponding to G.R. Case No.**2126/2015**

State of AssamComplainant

Versus

1) Enamul Sk

2) Hazarat Ali Accused persons

Charge framed on : 08-04-2016

Evidence recorded on : 09-11-2017, 07-12-2017

05-02-2018, 29-06-2018 17-07-2018, 18-08-2018

19-09-2018

Statement recorded on : 17-12-2019

Argument heard on : 12-02-2020

Judgment delivered on : 27-02-2020

Advocates who appeared in this case

Shri U.K. Sarkar, Special P.P. for the Prosecution Shri Aminul Islam, Advocate for the Defence

JUDGMENT

1. Accused persons Enamul Sk and Hazarat Ali were charged to stand trial u/s 366-A IPC and section 8 of POCSO Act on the basis of an investigation made upon an FIR laid by one Md. Fulchan on 17-05-2015 to the effect that on 16-05-2015 at about 08:00 AM his daughter X (The name is withhold considering the nature of the case) was going to Kumarganj in a tempo. However, one Hazarat Ali and Enamul Sk compelled his daughter to get down from the tempo and took her in a bicycle to Barpara hill wherein she was subjected to rape. However, she started alarm and some Rabha people came to the place of occurrence and rescued her life. The accused Hazarat Ali, however, fled away from the scene. The village Headman of

Barpara village, however, handed over Enamul Sk along with his daughter to Rupshi police.

- **2.** Police accordingly registered the case being Tamarhat P.S. Case No. 142/2015, investigated the matter and upon completion of investigation laid charge sheet against the accused persons namely Enamul Sk and Hazarat Ali to stand trial u/s 341/366-A/34 IPC.
- **3.** Upon appearance of the accused persons, necessary copies were furnished to them and formal charge u/s 366-A IPC and Section 8 of POCSO Act were framed against them and explained the text to them to which they pleaded not guilty and claimed for trial.
- **4.** However, during trial the accused Hazarat Ali was found chronic defaulter for which he was declared absconder after having satisfied from the report of the E.O.
- **5.** During trial, the prosecution has examined as many as 10 (ten) witnesses. The examination of the accused persons were recorded u/s 313 Cr.P.C. and their plea is found total denial. However, they adduced none.
- **6.** I have carefully perused the evidences on record and heard learned counsels for both the sides and accordingly proceed to dispose of the case on the following points for determination:
- (i) Whether the accused Enamul Sk along with Hazarat Ali induced the victim X, the minor daughter of the informant to go from her house with an intention to illicit intercourse with another and thereby committed an offence punishable u/s 366-A IPC?
- (ii) Whether the accused persons committed sexual assault on the victim X and thereby punishable u/s 8 of POCSO Act?

DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS

7. PW-1 Fulchan Ali is the informant. According to him, the victim girl X while was awaiting for an Auto rickshaw to go to Kumarganj, the accused persons came

to her in a bicycle and asked her to accompany with them. Accordingly, the victim girl went with them. But they took her to the hill top and attempted to outrage her modesty for which she started shouting. However, nearby people came to the place of occurrence and apprehended the accused. Both the accused persons and the victim were taken to Rupshi Police Station and subsequently forwarded them to the Tamarhat Police Station. She was aged about 14 years at the relevant time. Accordingly he filed the FIR vide Ext-1, Ext-1(1) is his signature. However, he denied the suggestion that at the time of occurrence his daughter was 18 years old.

- **8.** PW-2 is Jahanur Rahman. He has a shop at Hatidura Pahar. He was in his shop which is at a distance of 10 kms from the place of occurrence. According to him, about two years back, the victim X was going to the house of her brother-inlaw at Kushakati alone. The accused Enamul met her on the road and pretending her to accompany to village Kushakati and both the victim and accused Enamul were moving towards village Kushakati. But the accused diverted his movement towards Lalmati Hill as a result she started raising hullah. However, villagers of Lalmati came out and apprehended the accused.
- **9.** PW-3 is Rupchan Ali Sk. He stated that he was informed by the victim X that while she was going to the house of her brother-in-law at Kushakati village, then she met the accused persons who assured her to take village Kushakati. But the accused persons diverted their path towards village Lalmati Hill for which she raised alarm and thereby was saved her by the villagers. However, he stated categorically that he knows nothing as to what had happened on the spot.
- **10.** PW-4 is Dr. Rinku Ahmed who examined the victim girl. However, on her examination she found the victim normal. She did not find any mark of injury on her body. She also did not find spermatozoa in vaginal smear. Accordingly she has issued medical report vide Ext-2, Ext-2(1) is her signature.
- **11.** Now, PW-5 the alleged victim is the star witness. According to her, about three years back, she was going towards village Kushakati in a tempo. In the meantime, the accused persons stopped the vehicle and threatened the driver and asked me to get down from the vehicle. Thereafter, she was proceeding by walking along with the accused persons who asked her to get into the bicycle. She got

herself into the bicycle of the accused Enamul. He started to go towards hill side for which she jumped from the bicycle. Then the accused persons caught her and physically assaulted her. The accused Hazarat Ali fled away from the spot and the accused Enamul Sk assured her that he would take her to her house. However, she was rescued by the village Headman who called the police and handed over her over to the police. She was produced before the Medical Officer and also her statement was recorded by Magistrate vide Ext-3. In her cross-examination, she has stated that she was dissatisfied with her family members and came out with a view to go to the house of her boy friend. However, she could not re-collect the name of her boy friend. Kumarganj is a market place and the tempo where she was travelling was full of passengers. The accused persons intended to bring her back to her residence. She refused to return to her residence. Then the accused showed anger to her. The accused persons by force intended to bring her back to her house.

- **12.** PW-6 is Bani Ram Rabha, the Gaonburha of Mursuldhara. According to him, about three years back, some villagers apprehended a girl and one accused namely Enamul Sk and brought her to his house. On being asked, the victim told him that the accused Enamul took her towards a hill with a view to did some illegal act. However, he had not seen as to from where the girl was coming. However, he denied the fact that the victim girl disclosed before him that the accused Enamul Sk took her towards the hill.
- **13.** PW-7 is Ajit Kr. Rabha. He also stated that he saw a gathering in the house of Baniram Rabha, the Gaonburha of village Mursuldhara. On being asked, the Gaonburha told him that some boys apprehended two boys and a girl and handed over them to him. The accused persons were the boys whom the village boys apprehended.
- **14.** PW-8 Rahul Rabha knows nothing about the subject matter of the case.
- **15.** PW-9 Sukumar Sarmah is the Investigating Officer. He visited the place of occurrence, inspected the same, prepared sketch map and also examined the complainant u/s 161 Cr.P.C. The statement of the victim got recorded u/s 164 Cr.P.C. However, in the meantime he was transferred and he handed over the case

dairy to the Officer-In-Charge of Tamarhat Police Station. He proved the sketch map as Ext-4. However, he did not seize any document to ascertain the age of the victim.

- **16.** PW-10 is one Abdul Goni who was working at Tamarhat Police Station. He took the responsibility of investigation on being handed over the case diary by the Officer-In-Charge in consequence of transfer of earlier Investigating Officer. Upon perusal the case diary he came to know that the matter has already been investigated by the predecessor officer and as such he has simply laid charge sheet against the accused persons u/s 341/366-A/34 IPC. Ext-5 is the charge sheet.
- **17.** Upon having perused the evidence of the witnesses, it appears that the prosecution has examined as many as 10 (ten) witnesses out of which PW-5 is the victim X herself. Upon meticulously perused of the evidence the following facts have come to light that she was going towards village Kushakati in a tempo. In the meantime, the accused persons stopped the vehicle. The accused persons threatened the driver of the tempo and then the driver asked her to get down from the vehicle. But the driver was not examined before the Court of Law so as to prove the fact that she was moving in tempo and he forcibly got down the victim at the threatened posed by the accused persons. Moreover, there is nothing in the evidence of PW-5 that as to who are the accused persons that threatened her by stopping the vehicle and thereby restraining the driver and asked him to stop the vehicle. Admittedly, the occurrence took place on 16-05-2015, but she has deposed before the Court of Law on 05-02-2018 and by this time there is every chance for her to know the accused persons by names and faces. It is not known to this Court as to who prevent her to disclose the name of the accused persons that stopped the vehicle. On the other hand, the informant Fulchan Ali, the father of the victim, stated that the accused persons were coming in a bicycle and told his daughter to go with them since the Auto Rickshaw in which she was to travel will go after sometime. This portion of evidence is found silent in the evidence of PW-5, the victim herself. She further stated that she was getting down from the vehicle at Kumarganj Pahar and thereafter she was proceeding by walking and then the accused persons asked her to get into the bicycle which means that she was getting down at Kumarganj Pahar from the tempo and was proceeding by walking. So, the

statement made by her that accused persons stopped the Auto by threatening the driver and forcibly caused her to get down from the Auto and was taken her into their bicycle. She stated that she get into the bicycle of the accused Enamul Sk and started to go to the hill side. She jumped from the bicycle then the accused persons caught her and physically assaulted her. I felt to understand that she has willfully get up into the bicycle of the accused to go somewhere as the accused desired, but not as she desired because there is nothing in the evidence on record to show that she has got any particular destination that she is to go to Kushakati and asked about her planning of going there to the accused persons. No evidence is there to show that the accused persons enticed her that they would accompany her to Kushakati by taking her into the bicycle. It is the evidence of PW-5 that the accused persons physically assaulted her and then the accused Hazarat Ali fled away from the spot. But the accused Enamul Sk assured her that he would take her to her house. In the meantime, she met a person whom she told about plied. Then the village Headman called the police and police recovered her. But interestingly she has admitted in his cross-examination that Kumarkati is a market area and the tempo wherein she was going was full of passengers. She further stated that the accused persons intended to bring her back to her house. But, she refused to go to her resident. Then the accused persons showed anger to her. They tried to bring her back to her resident. She further stated that on the day of accident she came out from her house with a view to meet her boy friend since she was not satisfied with her family members. So, she was coming out from her house out of her own will without the consent of her parents with a view to meet her boy friend, but she could not re-collect the name of her boy friend. So, she is aimless and was coming out from her house and loitering and met the accused persons perhaps whom she knows prior to the accident. The accused persons asked her to come back to her house, but she refused to come with the accused to her house for which an altercation may took place and by this time the people of the locality picked up them and handed over to police. Admittedly, the village Headman whose name was not disclosed by PW-5 in her evidence is Baniram Rabha. He is a village Gaonburha of Mursuldhara. He stated that some villagers apprehended one girl named X with the accused Enamul Sk and brought them to his house. On being asked victim X told him that accused Enamul Sk took her towards the hills. But PW-5 stated that she met a person while she was with the accused Enamul and told him about the accident and the village Headman took her to his house and subsequently handed over to police.

- 18. The accused persons were charged u/s 366-A IPC, read with section 8 of POCSO Act. In order to prove a case u/s 366-A IPC, the prosecution has to prove that the accused intended or abducted an woman, the accused intended and knew it likely that the woman abducted would be compelled to marry any person against her own will or she would be forced or seduced to illicit intercourse. Secondly, the accused induced any woman to go from certain place; accused did it by criminally intimidating her; he did so by abusing of his authority; he did so by any method of compulsion. But, there in the instant case, the evidence of PW-5, the victim X herself clearly goes to show that the accused persons asked her to return to her house and they proposed that they would accompany her towards her house, but she was refused for which the accused persons showed anger with her. So, the question of kidnapping or abducting the PW-5 with a view to give marriage to another person or to seduce to illicit intercourse by posing threat does not at all arise. Admittedly, she is aged about 18 years and as such section 8 of POCSO Act is not arising.
- **19.** Having considered all these aspects, I am of the view that the prosecution has not been able to prove a case against the accused beyond all reasonable doubt. Situated thus, the accused namely Enamul Sk and Hazarat Ali are acquitted from the purview of charge u/s 366-A IPC and R/W section 8 of POCSO Act by setting him at liberty forthwith.
- **20.** The Bail Bond so furnished by the bailor stand cancelled.
- **21.** Signed, sealed and delivered in the open Court on this the 27th day of February, 2020, at Dhubri.

(T. Kalita) Special Judge, Dhubri

Dictated & corrected by me.

(T. Kalita) Special judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW-1 Fulchan Ali (Complainant)

PW-2 Jahanur Rahman

PW-3 Rupchan Ali Sk

PW-4 Dr. Rinku Ahmed (Medical Officer)

PW-5 Victim X

PW-6 Bani Ram Rabha

PW-7 Ajit Kr. Rabha

PW-8 Rahul Rabha

PW-9 Sukumar Sarmah (Investigating Officer)

PW-10 Abdul Goni (Investigating Officer)

2. PROSECUTION EXHIBIT:

Exhibit-1 Ejahar

Exhibit-2 Medical report

Exhibit-3 Statement of the victim recorded u/s 164 Cr.P.C.

Exhibit-4 Sketch map

Exhibit-5 Charge sheet

(T. Kalita) Special Judge, Dhubri