

DISTRICT- BAKSA

IN THE COURT OF SPECIAL JUDGE, BAKSA, MUSHALPUR

SPECIAL POCSO CASE NO. 32/19

(u/s 366-A IPC r/w section 4 of POCSO Act)

State of Assam

-versus-

Kanai Das..... Accused

Present- Smti. M.C. Bordoloi, M.A., L.L.B., (A.J.S.),
Special Judge, Baksa

Appearance:

Mr. Ranjit Chetri.....Public Prosecutor for the State
Balen Ch. Boro.....Advocate for the accused person

Date of charge:

17-09-19

Date of Evidence:

20-12-19, 14-02-2020

Statement recorded o

Statement recorded on: 14-02-2020

Date of Argument:

14-02-2020

Date of judgment:

17-02-2020

Baksa, Mushalpur

Judgment

One Anita Arjya lodged an ejahar with the Simlaguri Patrol post on 18-05-19 alleging interalia that on 15-05-19 at about 5.30 p.m. she failed to find her daughter(victim) (name withheld) at her house having, returned from work and during search it could be learnt that the accused Kanai Das had taken away her daughter with the assistance of one Tultuli Das. It was also alleged that she had approached the accused's father Swapan Das seeking return of her victim daughter without avail. Hence the ejahar.

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Upon receipt of the ejahar an entry in the patrol post's general diary vide entry no. 257 dated 16-05-19 was made and thereafter same was forwarded to the O/C Gobardhana P.S. for registration of a case under proper section of law, consequent to which, the then O/C of Gobardhana Police Station registered a case vide Gobardhana P.S. Case No. 132/19 u/s 366/506/34 IPC and caused investigation thereof.

Upon completion of investigation, charge sheet was laid before the Hon'ble Sessions Judge cum Special Judge, Baksa, Mushalpur, who having taken cognizance of the offence consequent to the registration of the instant Spl. POCSO case No. 32/19, required production of the accused from judicial custody. The accused was produced from jail hajot in the Court and subsequently enlarged on bail. Vide order dated 17-09-19 the Hon'ble Sessions Judge cum Special Judge, Baksa having found prima-facie materials u/s 366-A IPC r/w section 4 of the POCSO Act framed charge under the aforesaid section of law and the charge on being read over and explained to the accused, he pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined 3 nos. of Pws and the victim as CW1.

Prosecution prayed for closure of evidence as none of the witnesses so examined had supported the prosecution version. The defence side cross examined all the PW witnesses.

The accused in his statement u/s 313 CrPC pleaded complete innocence and declined to adduce defence evidence.

The defence plea is that of total denial of guilt.

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ARGUMENTS

Heard the arguments advanced by the learned counsels of both sides.

Learned P.P. Baksa submits that Court shall pass Judgment/orders as deem fit after perusal of the case record in his entirety.

Learned defence counsel submits that accused is innocent and the victim girl on her own accord had gone to her aunt's house after some dispute with her mother and the accused had been entangled in the case for no fault of his. Ld. Counsel prays for acquittal of the accused.

Perused the case record.

The point for determination that has surfaced in the instant case is as follows:

Point for determination:

- 1. Whether on the 15th day of May, 2019 at about 5.30 p.m. the accused induced the informant's daughter a girl under the age of 18 years to go from her home with the intent that she may be forced or seduced to illicit intercourse with another person and thereby committed offence punishable under section 366-A IPC.?
- 2. Whether the accused on 15-05-19 committed penetrative sexual assault on the victim girl?
- 3. What was the age of the victim girl at the relevant time?

My decision on the above points for determination along with reasons is given hereinunder.

Discussion, Decision and reasons there for:

To address the points for determination so framed, it will be necessary to peruse the evidence on record and I proceed to do so.

PW-1 the informant of the instant case deposed that the incident took place about 7 months ago and that on the fateful day her victim



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daughter could not be found at the house and despite search she could not be traced out, whereupon she lodged the ejahar. PW 1 also stated that one day after the occurrence she found her daughter in the house of her elder sister wherefrom she recovered her daughter. PW 1 stated that presently her daughter is aged 17 years. She also stated that the accused had love affairs with her daughter much prior to the occurrence.

In her cross examination PW1 clarified that the accused did not kidnap her daughter and that the victim had gone to her aunt's house on the fateful day.

PW 2- Pranita Das and PW3- Joydev Das in their respective evidences deposed that after the disappearance of the victim girl on the fateful day the informant lodged the case. Both of them testified in respect of existence of love affairs between the accused and the victim girl.

In their respective cross examination PW 2 and PW3 disclosed that they had not seen the accused taking away the victim girl on the fateful day.

CW1 the victim/prosecutrix deposed that she went to her aunt's house on the fateful day without informing her mother and that her mother thought that she had eloped with the accused as her mother knew about her love relationship with the accused for which her mother filed the ejahar. CW 1 also stated that the police sent her for medical examination after her recovery from her aunt's house and also recorded her statement in Court. CW1 confirmed the fact that the accused did not establish any physical relationship with her and that accused would marry her on her attaining majority. CW1 identified her medical examination report as Ext. 1, her signature thereon as Ext. 1(1), her statement before the Magistrate as Ext.2 and her signatures thereon as Ext. 2(1) and Ext 2(2) and her birth certificate as Mat. Ext.1.

When put to cross examination by defence,CW1 disclosed that she made her statement in Court on being tutored by the local people.

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She also reiterated that the accused did not take her away from her house nor forced her to have sexual intercourse with him or committed any act of sexual assault. She revealed that she had left her house for her aunt's place without informing her mother and also that her mother would give her hand in marriage with the accused as she has love affairs with the accused.

This is the evidence available on record.

In the instant case, the accused stands charge u/s 4 of the POCSO Act and u/s 366-A of the Indian Penal Code.

To bring home a charge u/s 4 of the POCSO Act the prosecution has to prove that the accused penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of child or makes the child to do so with him or any other person; or manipulates any part of the body of the child so as to cause penetration into the vagina, urethra or anus or any part of the body of the child or makes the child to do so with him or any other person; or applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so with him or any other person.

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Perusal of the evidence available on record discloses that the victim in her evidence had clarified the fact that she went to the house of her aunt on the fateful day without informing her mother and that as she had love affairs with the accused her mother filed the present case. The victim also disclosed that accused did not have any physical relation with her and she clarified further that accused did not force her either to have sexual intercourse with him. The victim's mother PW1 also supported the victim girl. It is in the evidence of all the Pws that the victim girl was recovered from the house of her aunt. It is nowhere revealed that accused had taken away the victim girl to her aunt's place or to any other place. Accordingly the charge u/s 366-A IPC brought about against the accused by the prosecution fails. Further it is not in the evidence on record that accused had committed any sexual

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intercourse or any act of sexual assault on the victim's person. The victim herself has negated the prosecution case.

Accordingly in the above circumstances I am constrained to hold that prosecution has failed to establish the charge u/s 366-A IPC r/w section 4 of the POCSO Act against the accused person beyond all reasonable doubt. Accused Kanai Das deserves to be acquitted.

The point for determination stands answered as above.

In the facts and circumstances of the case, no compensation is awarded to the victim.

<u>Order</u>

In the light of the above discussions, accused Kanai Das is acquitted of the charges u/s 366-A IPC R/W Section 4 of the POCSO Act and set at liberty forthwith.

The bail bond of the accused person shall remain in force for a period of 6 months with effect from today in view of the provisions of Section 437-A Cr.PC.

Given under my hand and seal of this court on the 17th day of February, 2020.

(Smti. M.C. Bordolo Special Judge Baksa, Mushalpur

Special Judge, Baksa, Mushalpur

Dictated and corrected by me

Smti. M.C. Bordolo**Şpécial Judge** Baksa, **Mushalpur**

Special Judge, Baksa, Mushalpur



APPENDIX

Prosecution witness:

PW1

Anita Arjya(informant)

PW2

Pranita Das

PW3

Joydev Das

Prosecution Exhibits:

Ext.1

Medical report of victim

Ext.1(1)

Signature of victim

Ext.2

Statement of victim u/s 164 CrPC.

Ext.2(1) and Ext. 2(2)

Signature of victim

Defence witness:

Nil.

Material exhibits:

Mat. Ext. 1

Birth certificate

Court witness:

CW1

victim(name withheld)

Smti. M.C. Bordoloi)

Special Judge, Baksa, Mushalpur