IN THE COURT OF THE SESSIONS JUDGE :::: NALBARI

Present: Mrs. S. Begum. Sessions Judge, Nalbari.

SPECIAL (P) CASE NO: 24/17 u/s- 366/376 IPC R/W Sec 4 of the POCSO Act.

State of AssamComplainant -Vs-**Nayan Das**Accused person

Appearance:

For the defence

For the prosecution : D. Barman, P.P, Nalbari

:

J. Kalita, Advocate Date of Argument 09/10/2018 :

Date of Judgment : 09/10/2018

J U D G M E N T

- 1. The prosecution case in brief is that on 30/04/17 one Sri Deben Talukdar lodged an ejahar alleging inter alia that since 26/04/17 his minor daughter, Sri Gangana Talukdar, (herein after referred as Miss "X") aged 15 years was missing and later on, on search he could know that accused Nayan Das Kidnapped his daughter. On the strength of the ejahar Nalbari PS Case No.271/17 u/s-366 IPC has been registered.
- 2. Police force set into motion on receipt of the ejahar

and police on completion of the investigation submitted charge-sheet against accused Nayan Das u/s-366/376 IPC r/w section 4 of the POCSO Act.

- 3. While the accused entered into his appearance before this court getting prima-facie material against the accused u/s-366/376 IPC r/w section 4 of the POCSO Act charge was framed accordingly and read over to the accused to which he pleaded not guilty and claimed to be tried.
- 4. The prosecution to bring home charge against the accused examined as many as four witnesses including informant and the victim. The case of the accused is of denial.

POINT FOR DETERMINATION

- 5. i) Whether the accused you on 26/04/17 at about 4:30 PM at village Karia under Nalbari PS kidnapped "Miss X" with intend that she may be compelled to marry against her will or in order that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366 IPC?
- ii) Whether the accused on 26/04/17 and thereafter committed rape upon "Miss X" and thereby committed an offence punishable u/s 376 IPC?
- iii) Whether the accused on 26/04/2017 and thereafter committed penetrative sexual assault upon "Miss X", aged about 15 years and thereby committed an offence punishable u/s-4 of the POCSO Act?

DECISION AND REASONS THEREOF

6. I have carefully scrutinized the evidence on record and heard argument forwarded by learned counsel for both the sides. Now to arrive at a judicious decision let me discuss and appreciate

the testimony of the prosecution witnesses. At the out set let me discuss the evidence of Deben Talukdar who is the informant cum father of the victim. He during his evidence revealed that one year ago his daughter Miss 'X' was missing from his house and during search he could know that she eloped with the accused Nayan Das. He disclosed that at the time of occurrence the age of victim was 16 years 6 months. He lodged ejahar Ext-3 at the police station. It is disclosed that after seven days he got information that the victim herself appeared at Kamarkuchi Out Post under Nalbari Police Station and immediately he visited the said Out Post and met his daughter. His daughter was brought before the Magistrate by police and her statement got recorded by Magistrate. He disclosed that the zimma of the victim was given to his wife by Magistrate but 6 months later the victim again eloped with the accused and since then victim stayed with the accused. During cross-examination he revealed that victim herself eloped with the accused and resided with the accused. It is disclosed that at the time of occurrence the age of the victim was 18 years and he has no objection if the accused is acquitted.

7. PW-4, Miss 'X' who is the victim disclosed during her evidence that about 1½ years ago she herself eloped with the accused with whom she had love affairs since 1½ years. It is revealed that later on she herself appeared at the Police Station and police produced her before a Doctor and she was medically examined. It is disclosed that her statement got recorded by Magistrate and she exhibited Ext-4 as the statement recorded u/s-164 CrPC. It is also disclosed by her that her custody was given to her mother. However, six months subsequent to the incident she again eloped with the accused as per her own accord and stayed with him after performance of marriage with the accused as per Hindu rites and rituals. During cross-examination she revealed that her age was 18 years at the time of occurrence and that she led her conjugal life with accused happily.

- 8. PW-3, Dipika Talukdar who is the mother of the victim testified that about one year ago her daughter Miss 'X' became untraced from her house and her husband lodged ejahar. It is disclosed that subsequent to lodging the ejahar her daughter herself appeared before the Police Station and after getting information from police they visited the police station and met Miss 'X'. It is disclosed that on inquiry Miss 'X' revealed before her that she herself eloped with the accused. It is further disclosed that the zimma of the victim was given to her by the Magistrate. But the victim again eloped with the accused six months subsequent to the zimma. It is also disclosed by her that age of her daughter was 18 years at the time of occurrence. During cross-examination she revealed that now she does not want to proceed with the case as her daughter lived happily with the accused.
- 9. PW-1, Dr. Urmi Devi Choudhury is the Medical Officer of this case. On 01/05/17 while she was working as M & H.O-1 at SMK Civil Hospital, Nalbari on that day she examined Miss 'X', aged 15 years, D/o- Deben Talukdar of village Karia, brought by WPC 181 Tutumani Medhi in connection with Nalbari PS Case No.271/17. Medical examination of the patient was done in presence of Tina Kalita. The history of the case as narrated by the patient was that she went with a known boy and physicall relation occurred with him as per her own wishes. On examination of the patient she found the following:-

Her external genitalia was found healthy. Hymen was torn but healthy. Vagina and cervix was healthy. Vagina admits 2 fingers. Her last menstruation period was on 16/4/17. urine for pregnancy test was advised, report shows negative result for pregnancy. Vaginal swab was sent for sperm test, as per the report no sperm seen. USG of lower abdomen was advised, as per the report normal study was found. X-Ray was advised for age estimation. From the X-Ray report age of the victim was found above 16 years and bellow 18 years. Doctor opined that the victim was not

consistent with recent sexual intercourse or assault. Ext-1 is the medical report and Ext-1(1) is her signature. Ext-2 is the X-Ray report and Ext-2(1) is the signature of Dr. Prabodh Kr. Sarma which is known to her.

- 10. From the evidence on record it transpires that the father of the victim who is examined as PW-2 though during his evidence in chief disclosed that the age of the victim is 16 years 6 months yet during his cross examination he admitted that the age of the victim was 18 years at the time of occurrence. PW-3 Dipika Talukdar who is the mother of the victim disclosed during her evidence that the age of the victim was 18 years at the time of occurrence. The victim also testified in her evidence that her age was 18 years at the time of occurrence. However, the doctor testified that the age of the victim is above 16 years and bellow 18 years as per radiological report. But as per medical jurisprudence there may be variation of 2 years on either side of age.
- 11. In the instant case, the parents of the victim and the victim herself disclosed that the age of the victim was 18 years at the time of occurrence. As per medical jurisprudence also age of the victim can be considered as 18 years. So it is clear from the evidence on record that the victim was a major girl at the time of occurrence. Evidence of the victim shows that she had love affairs with the accused since 11/2 years prior to the incident and she herself eloped with the accused as per her own accord. The statement of the victim recorded u/s- 164 CrPC also shows that the victim herself eloped with the accused as per her own accord. Parents of the victim also testified that the victim herself eloped with the accused. From the evidence on record it transpires that the victim was a major girl at the time of occurrence and she is a consenting party. Hence no case u/s-366/376 IPC and section 4 of the POCSO Act has been established by the prosecution.

- 12. Marshalling the evidence on record, it appears that the prosecution has miserably failed to establish a case u/s- 366/376 IPC and section 4 of the POCSO Act against the accused beyond reasonable doubt. On benefit of doubt, the accused is acquitted.
- 13. The accused persons will go on a fresh bail of Rs. 10,000/- with surety of like amount each u/s- 437-A IPC assuring that they will appear before the higher court as and when such court issue notice in respect of any appeal or petition filed against the judgment and order of this court.
- 14. Copy of this judgment be kept with record.

 $\mbox{ Judgment is given under my hand and seal of this } \\ \mbox{ court on this the 9^{th} day of October, 2018}$

Sessions Judge Na0lbari

Dictated & corrected by me

Sessions Judge, Nalbari

APPENDIX

Prosecution witness.

PW-1	Dr. Urmi Devi Choudhury
PW-2	Deben Talukdar (Informant)
PW-3	Dipika Talukdar
PW-4	Miss X" (Victim)

Defence witness.

Nil.

Prosecution Exhibit.

Ext-1 Medical Report

Ext-2 X-Ray report

Ext-3 Ejahar

Defence Exhibit.

Nil.

Sessions Judge Nalbari