

IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

Special (POCSO) Case No.-76/2018
*U/S-366/366(A)IPC, r/w **Section-4 of the POCSO Act.***

State

- Versus -

1. Saharuddin.
2. Suruj Ali.

: Accused persons.

Present :

Md. A. Rahman, AJS
Special Judge, Nagaon.

Appearance & particulars :-

For the State : Mr. M.J. Neog, Ld. Special Prosecutor.

For the accused persons : Smti. S. Khanam, Ld. Advocate.

Charge framed on : 06/09/2018.

Evidence recorded on : 21/06/2019 & 03/09/2019.

Date of recording 313 Cr.P.C. statement : 28/08/2019.

Date of Argument : 03/09/2019.

Date of Judgment : 03/09/2019.

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J U D G M E N T

1. The prosecution case unfurled in the Ejahar (FIR) dated- 26/06/2018 lodged by Samsun Nehar (actual name withheld) of Village- Kumargaon in brief is that on 25/06/2018 at about 8 p.m, accused Saharuddin of the same village kidnapped her minor daughter “Miss. X” (name is withheld), aged around 13 / 14 years, by a motorcycle from her house to Nampanigaon. Thereafter, he committed sexual intercourse with her in a field. Nearby people of the said field apprehended the accused and handed over him to police.

2. On the basis of the written Ejahar, the O/C of Rupahihat Police Station registered a case u/s-363 IPC, r/w Section-4 of the POCSO Act. Accordingly, the criminal investigation was put into motion. During the investigation, police recorded the statements of the witnesses including the victim. She was medically examined and produced before the learned Magistrate for recording her statement u/s-164 Cr.P.C. Accused Saharuddin was arrested and forwarded to the court. On completion of investigation, Police submitted Charge Sheet against accused Saharuddin and Suruj Ali u/s-366(A) IPC, r/w Section-4 of the POCSO Act.

3. On receipt of the Charge Sheet, this instant Special Case was registered and the same was transferred to this court for disposal. The accused persons appeared before this court. After considering the submission of both sides and materials on record, charge u/s-366(A) IPC was framed against accused Suruj Ali and charges u/s-366 IPC, r/w Section-4 of the POCSO Act were framed against accused Saharuddin. They denied the charges and claimed to be tried.

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4. During the trial, prosecution examined the complainant and the victim. Considering the evidence of the said vital witnesses, further prosecution evidence was closed. The accused persons were examined u/s-313 Cr.P.C. The defence plea is of total denial.

5. **Now the points for determination are as follows :-**

(i) Whether accused Suruj Ali kidnapped the victim girl "Miss. X" with an intention that she might be forced or seduced to illicit intercourse with co-accused Saharuddin and thereby committed an offence punishable u/s-366(A) IPC ?

(ii) Whether accused Saharuddin kidnapped victim "Miss. X", minor daughter of the informant with an intention or knowing likely that she would be forced or seduced to illicit intercourse with him and thereby committed an offence punishable u/s-366 IPC ?

(iii) Whether accused Saharuddin committed penetrative sexual assault upon "Miss. X" and thereby committed an offence punishable u/s-4 of the POCSO Act ?

DECISIONS AND REASONS THEREOF

6. I have heard Mr. M.J. Neog, learned Special Prosecutor as well as Mrs. S. Khanam, learned counsel for the defence. The evidence on record is thoroughly and minutely scrutinized.

7. PW-1 is the complainant as well as mother of the minor victim "Miss. X" (PW-2). PW-1 has deposed that the occurrence took place about one year back on a certain night. On the relevant night, she was watching television with her victim daughter PW-2. Thereafter, she went to the kitchen to cook dinner. After a few minutes, she

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returned to their dwelling house and found PW-2 was missing. She came to the road and saw PW-2 was running towards her house from the side of police camp at Nampanigaon. She stated that her uncle Saharuddin (accused) took away her by a motorcycle. Thereafter, he forcibly administered wine and having removed undergarment committed sexual intercourse with her. Police came and brought accused Saharuddin and Suruj Ali to the Police Station.

In cross-examination, she has stated that her house is intervened by one village road from the house of accused Saharuddin. She has stated that before police, she did not state that PW-2 was running towards her house from the camp side. Her daughter rides bicycle. She has also stated that Nazima is the wife of accused Saharuddin and he has two daughters who were already married and he has grand-children. She has further stated that PW-2 addresses Saharuddin as 'Khura'. She denied the suggestion that the case was lodged with false story due to land dispute.

8. PW-2 "Miss. X" is the vital witness of the prosecution. She has stated that accused Saharuddin is her own paternal uncle. Accused Suruj Ali is her brother-in-law by relation. She has stated that about one year back on a certain evening, she had a quarrel with her mother. As such, she came out and went to the Battalion Camp at Nampanigaon. Thereafter, her uncle Saharuddin brought her back on foot. People out of suspicion confined her and her uncle. Her mother lodged the case under the influence of the villagers. Police got her examined through the doctor at Nagaon B.P. Civil Hospital. Her statement was also recorded before the Magistrate.

In cross-examination, she has very candidly stated that there was a dispute over the path in between their house and the house of her uncle Saharuddin and her uncle simply brought her back from

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nearby the camp.

9. From the evidence of PW-2 who is the star witness as well as victim, it becomes clear that she has not implicated any of the accused persons in respect of any offence as alleged in the FIR. It is relevant to mention that statement u/s-164 Cr.P.C. is not a substantive piece of evidence. As such, the same cannot be the basis to convict an accused. PW-2 herself has not stated anything that the accused persons kidnapped her or committed bad work with her. Therefore, it cannot be statutorily presumed u/s-29 of the POCSO Act that accused Saharuddin committed offence u/s-4 of the POCSO Act.

10. The statutory presumption is a rule of evidence. It is not against the presumption of innocence of the accused unless proven guilty of the offence beyond all reasonable doubt. Speaking in other words, without prima facie evidence of the alleged victim regarding presumption u/s-29 of the POCSO Act cannot be applied to hold that the accused has committed the offence.

11. In view of the above discussion, it becomes crystal clear that then prosecution has failed to prove the case against the accused persons beyond reasonable doubt. Accordingly, they are acquitted on benefit of doubt.

12. The bail bonds and sureties shall stand discharged after six months in terms of Section-437(A) Cr.P.C. from this date.

13. This Special Case is disposed of accordingly.

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Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 3rd day of September, 2019.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

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APPENDIX :-

Oral evidence :-

PW-1 Musstt. Samsun Nehar. (Actual name withheld)
PW-2 Miss. X. (Actual name withheld)

Documentary evidence :-

Nil.

Defence side did not adduce any evidence.

Special Judge, Nagaon.

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