IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 31/2017 U/S 366-A IPC R/W Section 8/6 of POCSO Act

State of Assam

-Vs-

- 1. Barua Orang
- 2. Asor Ali @ Babul Ali......Accused persons.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M. Deka & Mr. L. C. Chouhan, Learned

Advocates.

Date of Evidence : 19-03-19: 05-07-19.

Date of Arguments : 10-07-2019. Date of Judgment : 12-07-2019.

JUDGMENT

1. The prosecution case in brief is that on 03-09-16, at about 02 pm, the victim-A went to the house of her relative Kaldius Ekka of village Badlapara Tea Estate (Farm line). On the same day at about 03.30 pm she reached the house of her relative. Therafter, on 05-09-16, at about 03 pm, accused Barua Orang took away the victim with inducement and kept her concealed in some unknown place. On 11-09-16, the father of the victim girl came to know about

the incident. Therefore, on 12-09-16, he lodged an FIR with the Officer-in-Charge of Dimakuchi P.S

- 2. On the basis of the FIR, Dimakuchi PS Case No. 80/16, under Section 366-A IPC was registered and after completion of investigation Police submitted charge-sheet under Section 366-A IPC R/W Sections 8/6 of POCSO Act against the accused persons Barua Orang and Asar Ali @ Babul Ali.
- 3. In consideration of the submission of the learned counsels for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offence under Section 366-A IPC R/W Sections 8/6 of POCSO Act, Learned Special Judge, Udalguri framed charges there under and the ingredients of charges under Section 366-A IPC R/W Sections 8/6 of POCSO Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The learned Sessions Judge vide Order dated 25-04-19, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following three (03) witnesses.

PW1- Dr. Kangkan Thakuria.

PW2- Manoj Toppo.

PW3- Victim-A.

- The statement of the accused persons had been recorded U/S 313 Cr.P.C.
 The defence pleas were of total denial. Defence had declined to adduce evidence.
- 6. Situated thus, the points for determination in the instant case are set up as follows:-

- (I) Whether the accused persons kidnapped Victim-A, a girl under eighteen years of age, with intent that she may be forced to illicit intercourse with him?
- (II) Whether the accused persons committed sexual assault upon victim-A, aged about 12 years?
- (III) Whether the accused persons committed aggravated penetrative sexual assault upon victim-A, aged about 12 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsels Mr. M. Deka and Mr. L.C. Chouhan. Learned defence counsel have argued that the prosecution has failed to establish the ingredients of Section 366-A R/W Sections 8/6 of POCSO Act against the accused persons. Hence, both the accused persons are entitled to be acquitted.
- 8. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 9. In the instant case the victim girl had been examined as PW3. The evidence of victim girl is to the effect that on the date of occurrence she went to the house of her uncle and spent one night in his house. Next day she went to Delhi along with three other girls of village of her uncle. They went to Guwahati from Dimakuchi on bus. In Guwahati they boarded a train and went to Delhi. They were four girls and no other persons accompanied them. In Delhi they worked as domestic help. The girls who were with her previously worked in Delhi. In Delhi she stayed for seven months. After seven months when she fell sick, she called accused Barua Orang as his phone number was available with her. Then Barua Orang went to Delhi and brought her back to his village. On getting the information of her arrival in the village, her father and members of AASA went there. The members of AASA took accused Barua

Orang to the Dimakuchi Police station. She was also taken to Police station by her father. She was produced before the Magistrate for recording statement U/S 164 Cr.P.C. Ext-3 is the statement. Ext-3(1) and 3(2) are the signatures of PW3. In her cross-examination, PW3 had stated that she gave statement before the Magistrate as tutored by the members of AASA.

10. On careful scrutiny of the evidence of PW3 it appears that there is no implicating evidence adduced by the victim girl against the accused persons. The evidence of the victim girl has been corroborated by her father who has been examined in this case as PW2. In his evidence PW2, Manoj Toppo, informant and father of the victim, had deposed that on 03-09-2016, the occurrence took place. On that day at about 2 pm, his daughter victim-A went to the house of his elder brother Kaldius Ekka situated in village Badlapara T.E farmline on bicycle. The victim spent the night in his brother's home. Next day, his niece Dipika Ekka called him up and informed that his daughter was not found in their home. Then PW2 went to the house of his elder brother and made search for his daughter in the village but found no trace of her. His niece Dipika told him that his daughter was seen talking with the accused Barua Orang by some villagers. Therefore on suspect, PW2 lodged the FIR against the accused Barua Orang. After seven months, his daughter returned back to the house of accused Barua Orang along with him. The house of accused Barua Orang is near the house of his elder brother Kaldius Ekka. His niece Dipika informed about his daughter returning back to the house of accused Barua Orang. Then PW2 went there along with the members of AASA, Dimakuchi Anchalik Committee. The members of AASA took accused Barua Orang to Dimakuchi Police station. He also took his daughter to the Police station. His daughter victim-A informed him that she was in Delhi for seven months. The victim went to Delhi along with three other girls. In Delhi they worked as domestic help. His daughter informed that she went to Delhi on her own volition. In Delhi when she fell sick, she informed Barua Orang who then went to Delhi and brought her back to his village. His daughter was medically examined by the Police and was produced before the Court for recording her statements. Ext-2 is the FIR. Ext-2(1) is the signature of PW2. In cross-examination, PW2 had stated that it takes half an hour to go to the house of his brother Kaldius Ekka from his house on bicycle. PW2 had revealed that he lodged the FIR on suspect.

- 11. Thus from the evidence of father of the victim no incriminating material is found against the accused persons. Moreover, the medical evidence also divulged a negative report with regard to any injury of sexual assault upon the victim girl. In his evidence PW1, Dr. Kangkan Thakuria, the Medical Officer who examined the victim had deposed that on 23-03-17, he examined the victim at Udalguri Civil Hospital and on examination he found that radiological age of the victim is between approximately 16-17(sixteen-seventeen) years, no violence mark seen, no spermatozoa seen and pregnancy test not done. Ext.-1 is the medical report. Ext.-1(1) is the signature of PW1. Cross-examination of PW1 had been declined by the defence.
- 12. On cumulative assessment of the evidence on record it is found that evidence on record do not establish the charges under Section 366-A IPC R/W Sections 8/6 of POCSO Act against both the accused persons. In her evidence the victim had categorically stated that she voluntarily went to Delhi alongwith three other girls to work as domestic help. In Delhi when she fell sick she contacted with accused Barua Orang over phone as his phone number was available with her. Then accused Barua Orang went to Delhi and brought her back to his village. The victim girl has also made it clear that previously she gave statement before the Magistrate against the accused persons as tutored by members of AASA. PW2, the father of the victim girl entirely corroborated the deposition of the victim girl. Hence, from the evidence of PW3 and PW2, who are the material witnesses of the case, I found no ingredients of offences under Section 366-A IPC R/W Sections 8/6 of POCSO Act against both the accused persons.

6

13. In view of above discussions it appears that the prosecution has failed to

establish the charges under Section 366-A IPC R/W Sections 8/6 of POCSO

Act against the accused persons beyond all reasonable doubt.

14. Situated thus the points for determination are decided in the negative and

against the prosecution.

<u>ORDER</u>

15. In the result, the accused persons Barua Orang and Asar Ali @ Babul Ali are

found not guilty under Section 366-A IPC R/W Sections 8/6 of POCSO Act and

acquitted of charges under Section 366-A IPC R/W Sections 8/6 of POCSO Act

and set with liberty forthwith.

16. Bail bond executed by the accused persons Barua Orang and Asar Ali @ Babul

Ali and the sureties shall remain in force for another six months under the

purview of provision under section 437-A Cr.P.C.

17. Judgment is signed, delivered and pronounced in the open court today the

12th of July, 2019.

Dictated and Corrected

(N.Talukdar)

Addl. Sessions Judge

Udalguri

(N.Talukdar)

Addl. Sessions Judge

Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

SPECIAL (POCSO) 31/2017 APPENDIX

(A) Prosecution Exhibits :

Ext.-1 :Medical report.

Ext.-2 : FIR.

Ext.-3 : Statement of the victim u/S 164 Cr.P.C.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Kangkan Thakuria.

PW2- Manoj Toppo.

PW3- Victim-A.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)
Addl. Sessions Judge.
Udalguri.