IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

PRESENT - M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.81/2018.

Under Section - 366 IPC and under Section - 4 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Sri Rajib Mandal. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. S.I. Hazarika and Mr. M. Ahmed, Advocates. ... For the Accused.

Date of framing of charge. :08.08.2018.

Date of taking evidence. :04.09.2018.

Date of hearing Argument. :04.09.2018.

Date of delivery of Judgment. :06.09.2018.

JUDGMENT

1. The case of the prosecution, in brief, as follows:

On 24.05.2018, Sri David Mali, the General Secretary of All

Adivasi Students' Association of Assam, lodged an ejahar with Laluk Police Station to the effect that the victim X is a minor girl, who is the daughter of Sri Puran Bhumiz of village- Dakhin Ohat. It is stated in the ejahar that some days

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back since the filing of this ejahar, the accused, Sri Rajib Mandal of village Kutokai (Raj-Ali) had taken away the victim X in his house in order to marry her. In the ejahar, it is also stated that the victim X was a minor girl and has been reading in class-X.

- 2. On receiving the ejahar, the Officer-in-charge of Laluk Police Station registered a case vide Laluk P.S. Case No.148/2018 under Section 366(A) IPC and under Section 4 of the POCSO Act and entrusted the charge of investigation to SI Gobin Chandra Das.
- 3. After taking the charge of investigation of the case, the I.O. visited the place of occurrence, prepared sketch map of the place of occurrence and recorded the statement of the witnesses u/s 161 CrPC. The I.O. recovered the victim X and got her medically examined by a doctor at North Lakhimpur Civil Hospital. Thereafter, the I.O. got recorded the statement of the victim X u/s 164 CrPC before the court. The I.O. arrested the accused, Sri Rajib Mandal and forwarded him to the judicial custody. After completion of the investigation of the case, the I.O. on being found sufficient incriminating materials against the accused, Sri Rajib Mandal under Section 366(A) IPC and under Section 4 of the POCSO Act, submitted the charge-sheet against the accused, Sri Rajib Mandal under Section 4 of the POCSO Act.
- 4. The accused, Sri Rajib Mandal made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, sufficient materials under Section 366 IPC and under Section 4 of the POCSO Act had been found against the accused person in the case record. Accordingly, charge under Section 366 IPC and under Section 4 of the POCSO Act had been framed against the accused, Sri Rajib Mandal. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 5. In course of trial, the prosecution side examined 2 (two) witnesses.

- 6. The recording of the statement of the accused person under Section 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.
 - 7. The accused person led no evidence in his defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution side in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Sri Rajib Mandal on 15.05.2018 at about 3 pm at Dakhin Ohat under Laluk Police Station, Dist. Lakhimpur, kidnapped the victim X, a minor girl aged above 12 years and below 18 years with intent that she might be compelled or knowing it to be likely that she would be compelled to marry him or that she might be forced or seduced to illicit intercourse with him?
- (II) Whether the accused, Sri Rajib Mandal after kidnapping the victim X, a minor girl aged above 12 years and below 18 years, committed penetrative sexual assault on her person?

11. **DECISION AND REASONS**

The prosecution side examined 2 (two) witnesses. PW.1 is the victim of the case. PW.2, Sri Puran Bhumiz is the father of the victim X.

PW.1, the victim X stated, in her evidence, that she knows the accused, Sri Rajib Mandal. The house of the accused is situated at Kutukai under Laluk Police Station. She, in her evidence, stated that she knows the accused person because the accused person often comes to her house. She also

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stated that on 15.05.2018, she had gone to Bank Tiniali, Itanagar (Arunachal Pradesh) in the house of her elder sister without informing her parents. She, in her evidence, also stated that she stayed for four days in the house of her elder sister in Arunachal Pradesh, and after four days, she came back to her house from Arunachal Pradesh, and then she came to know that a case was lodged with the Police Station alleging that the accused, Sri Rajib Mandal had kidnapped her. She, in her evidence, further stated that the accused, Sri Rajib Mandal had not kidnapped her. She also stated that she had not gone with the accused person. She further stated that she had not performed any sexual intercourse with the accused person. She also stated that this case has been lodged falsely with the Police Station.

This is the evidence adduced by PW.1, the victim X. On careful scrutiny of the evidence of PW.1, it is found that she has not implicated the accused person in her evidence regarding commission of any offence.

PW.2, Sri Puran Bhumiz is the father of the victim X. PW.2, in his evidence, stated that the victim X is his daughter, who is 19 years old. He also stated that he knows the accused, Sri Rajib Mandal. He, in his evidence, also stated that the accused, Sri Rajib Mandal often comes to the house of his paternal aunt, which is situated nearby his house. He also stated that about three months back, his daughter victim X had gone to Bank Tiniali, Itanagar (Arunachal Pradesh) in the house of his elder daughter without informing him and his family members and stayed there for four days, and thereafter, his victim daughter X came back to his house. He, in his evidence, further stated that the accused, Sri Rajib Mandal had not kidnapped his daughter. The accused person also had not made any bad relation with his daughter victim X. He, in his evidence, further stated that this case has been lodged falsely by the Students' union against the accused, Sri Rajib Mandal.

This is the evidence adduced by PW.2, the father of the victim X. On careful scrutiny of the evidence adduced by the PW.2, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

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12. The prosecution evidence is made close as the victim X

and her father, PW.2, Sri Puran Bhumiz did not implicate the accused person for

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committing of any offence in their evidence and as on the basis of the evidence

adduced by the victim X and PW.2, her father Sri Puran Bhumiz, it seems that

further evidence will not improve the prosecution evidence.

13. Because of what have been discussed and pointed out

here-in-above, it is appeared that the prosecution side has totally failed to prove

the charges under Section 366 IPC and under Section 4 of the POCSO Act

brought against the accused person, Sri Rajib Mandal and the accused person

deserves to be acquitted.

14. I, therefore, hold the accused person, Sri Rajib Mandal

not guilty and acquit him from the charges under Section 366 IPC and under

Section 4 of the POCSO Act. The accused person is set at his liberty forthwith.

15. Given under my hand and seal of this court on this the

6th day of September, 2018.

(M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge,

Lakhimpur, North Lakhimpur.

Transcribed & typed by-

Sri Satyabrata Kshattry, Stenographer.

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APPENDIX

1. <u>WITNESSES EXAMINED BY THE PROSECUTION SIDE</u>:

PW.1 – Victim X. PW.2 – Sri Puran Bhumiz.

2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>: Nil.

3. $\underline{\mathsf{DOCUMENTS}}$ PRODUCED IN THE CASE : NIL

(M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.