IN THE COURT OF THE SPECIAL JUDGE :::::::: KOKRAJHAR

Special case No.1/2015

State of Assam
Vs.
Sri Budru Toppo Accused

Present: Sri P.K.Bora, A.J.S. Special Judge, Kokrajhar

Ld. advocate for the accused: Mr A.K.Miah

Ld. advocate for the State : Mr N.Roy (P.P.)

Evidence recorded on: 13.3.15, 20.5.15, 02.6.15, 26.6.15 and

29.7.2015

Argument heard on : 07.9.2015 Judgment delivered on : 11.9.2015

J U D G M E N T

1. The case of the prosecution in brief is that on 16.10.2014 Sri Budbharu Roy lodged an Ejahar (Ext.2) before the Officer-in-charge of Kokrajhar P.S. stating that on 25.9.2014 at about 6 p.m. her younger sister Smti Golapi Roy set out to enjoy "Karam puja" held at No.7 Lalmati Tea Estate, then she was went on missing. On the following day he learnt that the accused Sri Budru Toppo had kidnapped Smti Gopali Roy to Palakata, West Bengal. On the basis of the FIR lodged by Sri Budhbaru Roy police registered a case and started investigation of the case. Police succeeded to recover the victim Smti Golapi Roy and also to arrest the accused person. Police got statement of the victim Smti Golapi Roy recorded under section 164 Cr.P.C. wherein Smti Golapi Roy stated before the Court that at her own sweet will

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accused and they lived for fifteen days at Palakata. They lived as husband and wife and accused Sri Budru Toppo assured her to marry. Victim Smti Golapi Roy was medically examined. As per radiologist report at that time she was above 16 years but below 18 years. Finally, police submitted the charge sheet against the accused person. On his appearance before this Court the written charge under section 366 of IPC was explained and read over to the accused to which the accused pleaded not guilty.

2. **Point for determination:**

Whether on 25.9.2014 at about 4 p.m. accused Sri Budru Toppo kidnapped Smti Golapi Roy ?

3. Reasons and decision thereon:

In the course of the trial prosecution examined Smti Golapi Roy as PW1, Sri Bishnumaya Chetry as PW2, Sri Kamal Magar as PW3, Sri Kamala Kanta Barman as PW4, Smti Damayanti Roy as PW5, Dr Manisha Barophukan as PW6, Sri Budbharu Roy as PW7, Sri Dharmendra Roy as PW8 and S.I. Bhanita Das as PW9.

- 4. PW1 Smti Golapi Roy in her evidence stated that at her own sweet will she went with the accused Sri Budru Toppo and they lived in the house of maternal uncle of the accused at Palakata for fifteen days. They lived as husband and wife and during this period they indulged sexual act.
- 5. PWs 2, 3, 4 and 8 in their evidence stated that they heard that both Smti Golapi Roy and accused Sri Budru Toppo had left for Palakata.
- 6. PW5 mother of the victim Smti Golapi Roy stated in her evidence that one day Smti Golapi Roy went on missing from her house and at the same time accused was also found not available in his house, that some one told her that Smti Golapi Roy and accused Sri Budru Toppo were seen

together. Thereafter her son lodged an Ejahar against the accused person. She further stated that later Smti Golapi Roy left with one Ganesh.

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- 7. PW6 Dr Manisha Borophukan examined victim Smti Golapi Roy medically and as per radiologist report at that time Smti Golapi Roy was above 16 years but below 18 years.
- 8. PW7 informant Sri Budbharu Roy stated in his evidence that out of suspicion he filed a case against the accused person and he did not mention the ground of delay of filing FIR.
- 9. PW9 S.I. Bhanita Das stated that the victim Smti Golapi Roy was recovered with the accused Sri Budru Toppo from Palakata. She proved Ext.3 as charge sheet and Ext.3(1) as his signature.
- 10. The accused person denied indictment.
- 11. Heard argument advanced by the learned counsel for the sides.
- As per medical evidence at that time the victim PW1 Golapi Roy was above 16 years but below 18 years. PW1 Golapi Roy stated in her evidence that at her own sweet will she went with the accused. It has come in the evidence of mother of the victim Golapi Roy that after the incident Golapi Roy eloped with one Ganesh. It has not come that the victim Golapi Roy is of below average IQ. It can also be held that at the time of the incident Golapi Roy was nearing 18 years. She was a fully grown up girl and she was not suffering from any physical and mental deformity. It has not come in her evidence that she was induced to proceed with the accused. It has also not come in the evidence of PWs 5 and 7 who are none but mother and elder brother of the victim Golapi Roy and accused made effort earlier to take Golapi Roy forcefully.

In <u>Shyam & Anr. Vs State of Maharasthra reported in 1995</u>
<u>SC 2169</u> the Hon'ble Apex Court held that- she was a fully grown up girl may

be one who had yet not touched 18 years of age, but, still she was in the age of discretion, sensible and aware of the intention of the accused Shyam, that he was taking her away for a purpose. It was not known to her with whom she was

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going in view of his earlier proposal. It was expected of her then to jump down from the bicycle, or put up a struggle and, in any case, raise an alarm to protect herself. No such steps were taken by her. It seems she was a willing party to go with Shyam on her own and in that sense there was no "taking" out of the guardianship of her mother.

13. Thus, the prosecution has not been able to prove the alleged charge against the accused person beyond all reasonable doubt. In result the accused Sri Budru Toppo is acquitted and set at liberty forthwith.

Given under my hand and seal of this Court on this 11th this day of September,2015.

Appendix

Dictated & corrected by me

Special

Judge,

Special Judge,

Kokrajhar

Kokrajhar

The prosecution witnesses are:

- 1. Smti Golapi Roy PW1
- 2. Smti Bishnumaya Chetry.... PW2
- 3. Sri Kamal MagarPW3
- 4. Sri Kamal Kanta BarmanPW4
- 5. Smti Damayanti Roy PW5
- 6. Dr Manisha Borophukan.... PW6
- 7. Sri Budbharu Roy PW7
- 8. Sri Dharmendra Roy PW8
- 9. S.I. Bhanita DasPW9

The Court Witness is: Nil.

The exhibited documents are:

...... Statement u/s 164 Cr.P.C. 1. Ext.1

2. Ext.2 Ejahar

...... Medical report 3. Ext.2

...... Charge sheet 4. Ext.4

The Defence witness and exhibit: Nil

Judge,

Kokrajhar

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