## IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) <u>Case No.8/2018</u> (U/S :366A R/W Sec. 6 of POCSO Act)

State Versus Sabdul Ali S/O Md. Kalimuddin Ali, Vill- No.2 Geruajhar, PS-Paneri, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

#### APPERANCE:

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri T.C. Boro, Advocate.

Evidence recorded on: 17.9.18, 26.11.18, 7.12.18.

Argument heard on: 7.12.2018.

Judgment delivered on: 7.12.2018.

# **JUDGMENT**

The prosecution case, in brief is that the informant Md. Sabarsa Ali lodged an FIR with the Panery PS on 10.7.17 alleging, inter-alia, that on 9.7.17 at about 7 PM his minor daughter, aged about 15 years (real name is withheld, henceforth referred as to the victim) found missing from his father-in-law's house where she was staying for her study. He came to know that the accused Sabdul Ali kidnapped his daughter.

2. On the basis of the FIR Panery Police Station case No.48/17 U/S 109/363/34 IPC was registered and pursued the investigation of the case. On conclusion of investigation the police laid the charge-sheet against the accused

Sabdul Ali U/S 366 IPC, R/W Sec.6 of POCSO Act vide C.S No.3 dated 27.2.18 to face trial.

- 3. On receipt of the charge sheet Special (POCSO) case No. 8/2018 was registered. Thereupon, process was issued for appearance of the accused. the accused entered his appearance and supplied with the copies of the police documents U/S 173 Cr.P.C.
- 4. Whereupon, after scrutiny of the relevant papers including the case diary and having heard learned counsel of both sides a prima-facie case was made out to presume that the accused had committed the offence U/S 366A IPC R/W Sec. 6 of POCSO Act and, therefore, a formal charge thereunder was framed against the accused and the same on being read over and explained to him to which he pleaded not guilty and claimed to stand trial.
- 5. To establish its case the prosecution has examined five witnesses including the informant, victim and M.O. of the case.
- 6. It is apposite to mention at this stage that after recording the evidence of the vital witnesses the learned Addl. P.P. for the State filed a petition whereby he prayed for closure of the prosecution case as none of the vital witnesses including the victim adduced implicating evidence to sustain the charges levelled against the accused and therefore, there was no chance of improving the prosecution case by examining the other informal witnesses.
- 7. After hearing learned Adll. P.P. for the State and on perusal of the evidence on record having found that there was no incriminating material even adduced by the victim and the informant at all and therefore the petition was allowed and accordingly the prosecution case stood closed so as to decide the merit of the case on the available evidence on record. The examination of the accused U/S 313 Cr.P.C. was dispensed with as no incriminating circumstances appeared in the evidence to put before him for explanation.

- 8. Situated thus, the points for determination in the present case are set up and framed as:-
- (1) Whether the accused on 9.7.17 at about 7 PM at Dakhin Geruajhar under Panery PS. kidnapped the victim, a girl under eighteen years of age, with intent that she may be forced to illicit intercourse with the accused as alleged U/S 366A IPC?
- (2) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 15 years as alleged U/S 6 of POCSO Act?
- 9. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

### DISCUSSION, DECISION AND REASONS THEREOF:

10. PW1 is the victim of the case. On appreciation of evidence it is seen that her evidence is totally contradictory and conflicting to the prosecution case. She has put forward a different story which is not at all compatible to the prosecution case. She has casually stated in her evidence that she had love affair with the accused and 18 years old at the time of occurrence. On the material day about one year ago at about 7 PM she voluntarily eloped with the accused and eventually solemonised her marriage before the "Kaji". When her father came to know about her missing from home lodged an FIR and the police arrested the accused and brought her to the police station from the matrimonial home to get her statement recorded before the Magistrate U/S 164 Cr.P.C. She was also medically examined by doctor. She is still living with the accused as his wife after her marriage socially with the full consent of her parents of both sides. Out of their wed-lock a male baby was born who is three months old now. They are happily residing in the matrimonial home in a cordial atmosphere.

- 11. The evidence of the victim (PW1) who is the prime witness of the case has deposed totally infirm evidence to substantiate the ingredients of the charge levelled against the accused. Her evidence also substantiates her statement U/S 164 Cr.P.C. before the court that her elopement with the accused was voluntarily and she thereafter entered into marriage with the accused and gave birth to a male baby at the matrimonial home.
- 12. In this regard, on appreciation of the evidence of the medical officer (PW3), who examined the victim also found the age of the victim in between 16 to 17 years. In absence of school certificate to ascertain the minority of the victim (PW1) at the time of occurrence the statement of the victim as she was 18 years old which is also augmented by the evidence of Medical Officer (PW3), it can be safely inferred that victim was a major girl when she joined hands with the accused on her own volition. That apart, the medical report of the Medical Officer (PW3) is silent as to commission of rape on the victim. Rather medical evidence exhibits that the victim was pregnant which shows that victim (PW1) had consensual sexual intercourse with the accused since before the incident as a result of love affairs and eventually she eloped with the accused and got married before the "Kaji".
- 13. In the backdrop of the inconsistence and irreconcilable evidence adduced by the victim (PW1) without supporting the prosecution case, the evidence of the first informant (PW2) as well as evidence of other independent witnesses PW4 and PW5 being hearsay one have no shred of implicit evidence to establish the guilt of the accused.
- 14. The first informant (PW2) in his evidence has also admitted that he lodged the FIR Ext.2 out of misunderstanding as after the incident he came to know that his daughter who was around 18 years old had love affairs with the accused as a result of which she voluntarily eloped with the accused and subsequently solemonised her marriage before the "Kaji". He has also revealed in cross-examination that after the incident her daughter is still living with the

accused as his wife after solemonisation of formal marriage. His victim daughter (PW1) also gave birth to a male child out of their wedlock.

15. The evidence of PW4 and 5 are symmetrical to the evidence of the

victim (PW1) and the informant (PW2) that victim who was a major girl at the

time of occurrence eloped away with the accused and solemonised her

marriage before the "Kaji" which was later accepted by the parents of both

sides.

16. On cumulative consideration of the foregoing discussion on record,

what has emerged that there is no vestige of legally admissible evidence on

record to sustain the prosecution case. Hence the evidence on record is found

to be not in conformity with the material particulars of the case and, hence,

stands discarded from taking into consideration.

17. In the result, I am constrained to hold that the accused Sabdul Ali is

not guilty U/S 366A IPC R/W Sec. 6 of the POCSO Act. Therefore, he is

acquitted thereunder on and set him at liberty forthwith.

18. Bail bond executed by the accused and the surety shall remain in force

for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 7<sup>th</sup> day of

December, 2018.

Dictated and corrected by me and

each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

#### APPENDIX:

A)Prosecution witnesses:

i) PW1 Miss Anima Begum

ii)PW2 Saborsa Ali

iii)PW3 iv)PW4 Dr. Sojoy karmakar Ramena Begum v)PW5 Rumi Begum

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 ii)Ext.2 Statement of the victim U/S 164 Cr.P.C.

FIR.

Dictated and corrected by me.

Special Judge, Udalguri