IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 74/2018 U/S 366(A)/34 IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-28.02.2019

State of Assam

- Vs -

Makbul Hussain & Fazlur Rahman...... Accused

Date of Recording Evidence on – 11.06.2019

Date of Hearing Argument on – 11.06.2019

Date of Delivering the Judgment on – 11.06.2019.

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Md. Ayen Uddin Ahmed, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 12.06.2013 one Hazarat Ali lodged an information before the SP Barpeta stating that his niece (X) age about 13 years disappeared from the house on 14.05.13 and it is suspected that accused persons named in the FIR kidnapped her and kept her confined somewhere else. Regarding this, information was given to Kachumara P.S. but of no avail. Hence the present information for taking necessary action. The said information was forwarded by SP to the concern P.S. which registered a case being Kachumara P.S. case No 26/13 u/s 166/376/219/217/ 294/366(A) IPC and investigated the case.
- 2. During the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim girl for medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C. and arrested the accused persons.
- 3. Thereafter, on conclusion of investigation, I/O finally laid the charge sheet against accused Makbul Hussain & Fazlur Rahman u/s 366-A/34 IPC.

- 4. During the course of time, when accused persons appeared in court after due compliance of section 207 Cr.P.C. formal charge u/s 366(A) IPC and section 4 of POCSO Act are framed after hearing both sides. The particulars of the offences on being read over and explained, accused pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution examined only 2 witnesses namely- the victim girl as PW-1 and the informant as PW-2. However, considering the nature and quality of evidence adduced by both the star witnesses giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

7. **Now point for determination** ;-

- 1. Whether on 04.05.2013 at about 3 pm accused persons in further hence of their common intention kidnapped the victim girl (X) aged about 13 years with a view to compel her to marry or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person including accused as alleged?
- 2. Whether on the same day and time accused Makbul Hussain committed sexual assault on the victim girl as alleged ?

8. **Discussion, Decision and reasons for such decision** :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

9. Before going to discuss the evidence on record it would be useful to refer section 366-A IPC.

"Section 366-A IPC: procreation of minor girl:`-Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another

person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- 10. On perusal of section 366-A IPC the following ingredients are found:
 - I) The accused induces a minor girl below the age of 18 years;
 - II) she was forced to go from any place or to do any act;
 - III) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 11. Now, in the context of the offence u/s 366-A IPC let this court examined what the witnesses said in this regard.
- 12. PW-1, the victim girl in her evidence deposed that though she had physical relation with accused Makbul, but now she married with him and living together as husband and wife and procuring a male child. She further depose that the other accused did nothing against her. Her evidence is non committal in nature. On the other hand, PW-2 the informant also express his ignorance about any such physical relation with accused, but admitted the fact that the girl has been married with accused Makbul Hussain and proceeded a male child.
- On careful evaluation of the evidence of PW-1 and PW-2 what crystallizes 13. before this court is that the alleged victim girl eloped with accused on her own will without any force or pressure because she fell in love with accused Makbul Hussain, even though, in the FIR (Ext.1) it was alleged that accused kidnapped her by force. But in her statement before Magistrate the victim girl clearly stated that she has love affairs with accused Makbul as a result of which she voluntarily went with him with a view to marry him and presently living him together as husband and wife. Therefore, it appears that though the victim girl stated her age to be 13 years in her statement before Magistrate but it seems it was she voluntarily went with accused. In her statement in court she no where stated that accused Fazlur Rahman had influenced her or forced her to move from her house to another place. The another important aspect is that now the girl has been living with accused Makbul Hussain as husband and wife. Moreover, the prosecution has not proved the minority of the girl by documentary proof.
- 14. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Makbul Hussain and

Fazlur Rahman u/s 366-A IPC and section 4 of POCSO Act as there was absolutely no materials emerged for having found the accused persons guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Makbul Hussain and Fazlur Rahman from the offence u/s 366-A IPC and section 4 of POCSO Act on the ground of insufficient evidence and set them at liberty forthwith.

- 15. The terms of bail bond of accused persons are extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 16. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 17. Let the case record be consigned to record room after completing the formalities.
- 18. Given under my hand and seal of this Court on this 11th day of June, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = is victim girl(X)

PW-2 = is Hazarat Ali, the informant.

2. The prosecution has exhibited the following documents:

Ext. 1 = is the statement recorded by Magistrate, u/s 164 Cr.P.C.

Ext.1(1) and 1(2) = are the signatures of the victim girl.

Ext. 2 = is the FIR.

Ext.2(1) and 2(2) = are signatures of informant.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.