IN THE COURT OF SPECIAL JUDGE NAGAON. Present- A. Rahman, LL.M, AJS

Special (POCSO) case No- 62(N)/2018.

U/S- 6 of the POCSO Act.

Parties -

-----State -----

-Vs-

Mukshidul Islam

S/O- Abu Taher

Village-UralKata.

PS- Moirabari.

Charge framed on - 20-9-2018.

Evidence recorded on – 12-3-2019.

Argument heard on - 12-3-2019.

Judgment delivered on – 12-3-2019.

Appearance -

For the prosecution- Mr. M.J. Neog, learned special prosecutor.

For the defence - Mr. A. Hussain, learned Advocate.

J U D G M E N T

The instant case arose out of Juria PS case No-50/16 registered U/S-366(A) IPC.

Briefly stating, the prosecution case is that Mrs. Sobhana (actual name with-held), village -Parmai-bheti lodged Ext-2 FIR with the officer in-charge of Juria police station on 3-2-2016 to the effect

that her minor daughter (Miss-X) aged 14 years while going to Knaduli-mari High School on 02/06/2016 at 7.30 AM, accused Mukshidul Islam accompanied by three other unknown persons kidnapped her by a Tata Sumo-vehicle to his house. Thereafter, father and other family members of accused Mukshidul Islam kept her victim daughter confined in some unknown place. Hence this case.

Based on the FIR, the aforesaid case was registered and the criminal investigation was put in to motion as soon as SI Munindra Kr, Nath was entrusted to investigate the case.

During the course of investigation, the victim child was recovered. She was produced before the doctor for her medical examination but she refused to undergo medical examination. Her statement U/S-164 CrPC was recorded. The accused was arrested and he was forwarded to jail custody.

On completion of investigation, police submitted charge sheet against the accused U/S-366(A) IPC.

Smt M. Bhadani, learned Additional CJM having complied the S-207 CRPC committed the case to the court of learned Sessions Judge.

Subsequently, the case was transferred to this court for disposal. Considering the statement of the victim girl and other materials on record, prima-facie, it was found that the accused committed offence U/S-6 of the POCSO Act.

Accordingly, the instant case under POCSO Act was registered.

Upon hearing both sides and considering the materials, charge U/S-6 of the POCSO Act was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

Prosecution, during trial examined the victim-child and her mother who is the complainant.

After considering the evidence of the said two vital witnesses, further prosecution case was closed. The accused, in his statement U/S-313, has denied the prosecution-allegation and declined to adduce defence evidence.

I have heard Mr. M. J. Neog, learned Special prosecutor and Mr. A. Hussain, learned Advocate for the defence. Also meticulously gone through the evidence and materials on record.

Now the point for determination is -Whether the accused committed aggravated sexual assault upon the victim girl as such liable to punished U/S-6 of the POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

In order to prove the offence U/S-6 of the POCSO Act against the accused, the prosecution has to prove the followings –

First the accused committed penetrative sexual offence on the child more than once or repeatedly.

"Penetrative Sexual Assault" is if the person

- 1. He penetrate his penis, to any extent, into the vagina , mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- 2. He inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- 3. He manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
- 4. He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Now let me see the relevant evidence of the witnesses.

Complainant has been examined as PW-2. The victim girl (Miss X) has been examined as PW-1. PW-2 deposed that, about 3 years back on 26th January her minor daughter (PW-1) went to school, but she did not return home. Although she was searching her daughter at many places but in vain. Accordingly she lodged Ext-2 FIR at Juria PS. She has confirmed that, Ext-2(1) is her signature. She has further testified that, after 20 days of occurrence police informed her regarding recovery of her daughter. Accordingly she went to the PS and brought her back home. On being asked her daughter replied that, she had gone to the house of Mukshidul.

Cross examination of PW-2 was declined.

PW-1 being the victim is the star witness of the prosecution side. She stated that, love affairs developed between her and the accused when she visited the house of her paternal uncle. About 3 years back just prior to 2 days her mother saw her talking with accused Mukshidul for which she was scolded. Thereafter she voluntarily went to the house of the accused. As she did not find him at his house, she went to the house of her maternal uncle and

was staying there for one month. She has confirmed that, Ext-1 is her statement before the magistrate and Ext-1(1) and Ext-1(2) are her signatures. She has very clearly stated that, she refused to undergo medical examination.

In her cross examination, PW-1 stated that, her mother lodged the case without knowing the actual fact.

PW-1 stated her age as 16 years on the date her evidence was recorded by this court. The occurrence took place about 3 years back, therefore she was around 13 years at the relevant time. Of course the defence did not challenge her age.

PW-2 is not the actual eye witness to the occurrence. But she has been reported by her daughter PW-1 after he recovery. Now from the evidence of PW-1, it becomes clear that, she voluntarily went to the house of the accused without being influenced or forced upon her by him. She has not uttered anything that, the accused had committed sexual intercourse with her or sexually abused her. PW-1 although in her Ext-1 statement before the magistrate stated that, she was staying with the accused as husband and wife and there was physical intercourse happened between them, but it is well settled that, the statement of a witness recorded U/S 164 CrPC is not a substantive piece of evidence. It can be used only for contradiction or corroboration. It has already been observed that, PW-1 while deposing before the court has not uttered any allegation of sexual assault upon her against the accused. Therefore Ext-1 cannot be a proof of the offence of penetrative sexual assault upon her by the accused.

Without any statement of the PW-1 before this Special Court regarding commission of penetrative sexual assault upon her by the accused, the statutory presumption U/S 29 of the POCSO Act cannot be drawn so as to convict the accused.

In the light of the above discussion, it appears that, the prosecution has failed to prove the offence U/S 6 of the POCSO Act against the accused beyond reasonable doubt. So the accused is acquitted on benefit of doubt.

The bail bond of the accused shall remain in force for another six months in the spirit of section 437 (A) CrPC.

Judgement is declared and delivered on the open court under my hand and seal on this 12th day of March 2019.

(A Rahman, AJS) Special Judge , Nagaon. Judgment prepared & corrected by me.

(A. Rahman, AJS)
Special Judge , Nagaon.

-APPENDIX-

Prosecution witness-

- 1. PW-1 Victim Girl
- 2. PW-2 Mother of the victim Girl.

Exhibits-

- 1. Ext-1 FIR
- 2. Ext-2 Statement recorded U/S-164 CrPC.

Defence witness-

NIL

Defence Exhibits-

NIL

(A. Rahman, AJS) Special Judge , Nagaon.