IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.38/2018

U/S- 366 A of IPC R/W Section 4 of POCSO Act, 2012

State of Assam

-Versus-

Md. Mofizul Rahman

s/o-Md. Umed Ali

Resident of vill -Jorshimuli

P.S.-Chhaygaon

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State

Mr. A. Paramanik, Ld. Advocate ------for the accused

Date of evidence: 19.12.2018, 20.12.2018

Date of Argument:21.12.2018

Date of Judgment:21.12.2018

JUDGMENT

- The Prosecution case, briefly narrating is that on 09.06.2018 the complainant

 Md. Fulchan Ali lodged an ejahar alleging that on 09.06.2018 at about 10.00 a.m,
 his minor daughter was missing when she was returning back to her house from her Uncle's ('Peha')—Md. Rouchan Ali's house. Hence, this case.
- On the basis of the said ejahar, Chhaygaon P.S Case No. 577/18 U/S-366 A of IPC R/W Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S-366 A of IPC R/W Section 4 of the POCSO Act, 2012.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- 366 (A) IPC R/W Section 4 of the POCSO Act, 2012 against accused— Md. Mofizul Rahman. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined 5 (five) witnesses including the victim girl. Statement of the accused person U/S-313 Cr. P.C is dispensed with as there is no incriminating material against him.

5. POINT FOR DETERMINATION

- (I) Whether the accused person on 08.06.2018 induced the complainant's minor daughter to go from any place or to do any act with the intent that she may be or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person and thereby committed an offence punishable U/S 366 (A) IPC?
- (II) Whether the accused person on the same date and time committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Let us go through the evidence on record.
- 7. P.W.1, Md. Fulchan Ali is the Informant of this case. He deposed in his evidence that he knows the accused person. Prosecutrix is his daughter and she was 13/14 years old at the time of occurrence. He further stated that the incident took place about 4 months ago. On the date of occurrence, prosecutrix went to the house of her Aunt (Pehi)-Mofida Begum at Jarpara village with them. She stayed for the night in her Aunt's house. And on the next morning at 11 a.m, prosecutrix along with her cousin brother aged 4 years were coming to the house of her maternal grandmother's house. But on the way she went missing. Her cousin brother (pehi's son) returned back home. At 3.00 p.m, his mother-in-law—Samsul Nahar informed him that prosecutrix did not come to her house. P.W.1 further disclosed that he searched for his daughter (prosecutrix) everywhere but she could not be traced out. So, he lodged the ejahar. Ext.1 is the ejahar. Ext.1 (1) is his signature. P.W.1 further revealed that on the next day, police of Chhaygaon P.S recovered the prosecutrix in a tea shop at Bamunigaon. He came to the police station. On enquiry, prosecutrix told him that she and the accused were having love affair and she had gone with him for roaming.
- 8. In his cross-examination, P.W.1 disclosed that prosecutrix had gone with the accused on her own will. Accused did not kidnap her.
- 9. P.W.2 is the prosecutrix. She deposed in her evidence that informant of this case is her father. She knows the accused person. The incident took place on 09.06.2018 at about 11 a.m. She was 13/14 years old at the time of occurrence. P.W.2 revealed that at the relevant time, she along with her cousin brother aged 4 years came out from her Aunt's (pehi's) house to go to her maternal grandmother's house situated at Puthimari. But she did not go to her grandmother's house. Instead, she went away with the accused person from Majgumi Chariali to Chhaygaon for roaming and sent her cousin brother (pehi's son) back home. P.W.2 further revealed that there was love affair between her and the accused but her family members were not aware of this fact. From Chhaygaon, they came to Guwahati by bus and they stayed for the night in the relative's house of the accused at Gorchowk. Next day, the accused left her in a tea shop at Bamunigaon from where the police recovered her. Then, she came to know that her father had lodged the

ejahar against the accused person. She revealed that the case was given due to misunderstanding. This witness clearly stated that the accused did not forcibly take her away with him and he did not do any bad act with her. Police took her for medical examination and brought her before the Magistrate for recording her statement. Ext.2 is the statement U/S-164 Cr. P.C. Ext. 2 (1) is her signature. Further P.W.2 stated that she gave her statement before the Magistrate as tutored by village people.

- 10. In her Cross-Examination P.W.2 disclosed that she went with the accused on her own will for roaming. Accused did not commit forcible sexual intercourse with her.
- 11. P.W.3, Rouchan Ali has deposed in his evidence that he knows both the informant as well as the prosecutrix. But he does not know the accused. P.W.3 stated that the incident took place 4 months ago and one day before the incident, prosecutrix had come to their house and stayed for the night. And next morning, she left his house alongwith his minor son to go to her grandmother's house. but on the way, his son returned home. And at about 12 noon, informant enquired about the prosecutrix then he told him that she left her home. P.W.3 stated that later he heard that prosecutrix did not go to her maternal grandmother's house. Then, she was recovered in Chhaygaon. P.W.3 further heard that prosecutrix went for roaming somewhere.
- 12. P.W.4, Musstt. Mofida Begum has deposed in her evidence that informant is his elder brother and prosecutrix is her niece. And also she knows the accused. P.W.4 stated that the incident took place 4 months ago and one day before the incident, prosecutrix had come to their house and stayed for the night. And next morning, she left her house alongwith his minor son to go to her grandmother's house. But on the way, her son returned home. And at about 2-3 pm she heard from the informant when he rang her that prosecutrix did not go to her maternal grandmother's house. Then, informant lodged the ejahar. Then, on the next day, prosecutrix was recovered. P.W.4 further revealed that when she enquired the matter from the prosecutrix, she told her that she went with the accused for roaming to some place.
- 13. In her cross-examination P.W.4 disclosed that prosecutrix was not kidnapped by the accused but she went with the accused for roaming on her own will.

- 14. P.W.5, Md. Safiullah Ali has deposed in his evidence that informant is his son's brother-in-law and prosecutrix is his granddaughter. And also he knows the accused. P.W.5 stated that the incident took place in June, 2018. Prosecutrix had come to their house and stayed for the night. And next morning, she left his house to go to her maternal grandmother's house at Majgumi, Puthimari. And at about 5 p.m he heard prosecutrix did not reach her maternal grandmother's house. And later he heard that prosecutrix was recovered.
- 15. I have heard the arguments of both the sides. Perused the evidences on record. Let us go through the provision of Section 3 and Section 4 of the POCSO Act, 2012
- 16. **Now, Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as " whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 17. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
 - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates 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
 - (b) 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
 - (c) 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
 - (d) 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.

- 18. Now, in this instant case, there is no allegation by the victim girl of any penetrative sexual assault or any kind of criminal offence committed upon her by the accused person. The victim (P.W.2) revealed in her cross-examination that the accused did not commit any penetrated sexual assault on her on the date of occurrence. No incident as alleged in the ejahar took place. She made it clear that there was love affair between her and the accused person so, she went with the accused on her will for roaming. P.W.2 victim revealed that she gave her statement before the Magistrate as tutored by village people. So, the offences U/S- 4 of the POCSO Act not at all attracted in this instant case.
- 19. Coming to Section 366 A IPC, it has come out clearly from the cross-examination of P.W.2 that the accused did not kidnap her. She had love affairs with the accused and on the date of occurrence, she went with the accused on her own sweet will for roaming. The informant (P.W.1) also made it clear in his evidence that that after recovery of the prosecutrix in a tea shop at Bamunigaon by Chhaygaon police she told him that she went with the accused for roaming as she had love affairs with the accused. P.W.1 revealed in his cross-examination that accused did not kidnap her she went with him on her own will. So, the offence U/S-366 A IPC is not attracted in this case.
- 20. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused Md. Mofizul Rahman is held not guilty and he is acquitted of the offence U/S-366 (A) of IPC R/W section 4 of the POCSO Act, 2012 and set at liberty forthwith. His bail bond stands cancelled. Bailor is discharged from his liabilities.
- 21. The case is disposed of.
- 22. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 21st day of December, 2018.

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Md. Fulchan Ali

P.W.2, prosecutrix

P.W.3, Rouchan Ali

P.W.4, Musstt. Mofida Begum

P.W.5, Md. Safiullah Ali

Prosecution Exhibit

Ext.1 is the ejahar

Ext.2 is the statement of the Prosecutrix made before the Court U/S—164 Cr. P.C.

Special Judge, Kamrup, Amingaon