IN THE COURT OF ADDITIONAL SESSIONS JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Addl. Sessions Judge,

Kamrup, Amingaon

Spl. Sessions (P) case No.35/2018

U/S-366 (A)/494 IPC R/W Section 9 of Protection of Child Marriage Act and Section 4 of the POCSO Act, 2012

State of Assam

-Versus-

Rafique Ullah Ahmed

s/o-Lt. Khobiruddin Ali

Resident of vill -Neulduba

P.S.-Boko

Dist- Kamrup, Assam

-----Accused

Appearance:

Mr. A.K. Baruah. Ld. Addl. Public Prosecutor

-----for the State

Md. Korben Ali, Ld. Advocate

----for the accused

Date of evidence: 03.11.2018, 07.05.2019, 24.05.2019,

15.07.2019, 21.10.2019, 06.11.2019

Date of Argument: 06.11.2019

Date of Judgment: 06.11.2019

JUDGMENT

- The Prosecution case, briefly narrating is that the child victim was given in forceful marriage with the accused—Rafique Ullah Ahmed without her consent and was sent to his house. It is alleged that the accused sexually harassed the victim girl. Hence, this case.
- On the basis of the said ejahar, Boko P.S Case No. 525/17 U/S-366/494 of IPC R/W Section 9 of Protection of Child Marriage Act and Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, chargesheet was submitted against the present accused person U/S-366 (A) of IPC.
- 3. The case was duly committed and this Court after hearing both the parties, framed charges U/S- U/S-366 (A) / 494 of IPC R/W Section 9 of Protection of Child Marriage Act and Section 4 of the POCSO Act, 2012 against accused— Rafique Ullah Ahmed. The aforesaid charges was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- During the trial, the prosecution side examined 7 (seven) 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 induced the minor victim girl to go from any place or do any act with the intent that she may 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 have a wife living, married again the minor victim girl, such marriage being void by reason of its taking place through the life time of said wife, and, thereby, committed an offence punishable U/S-494 of IPC?
- (III)Whether the accused person being a male adult above 18 years of age, contracted a child marriage, and, thereby, committed an offence punishable U/S-9 of Protection of Child Marriage Act?
- (IV) Whether the accused person on the same date and time committed penetrative sexual assault on the victim girl and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined 7 (seven) numbers of witnesses.
- 7. P.W.1, Anshad Ali does not know anything about the incident.
- 8. P.W.2, is the victim girl. She stated that accused— Rafique Ullah Ahmed is her husband. She further deposed that the incident took place 1 ½ years ago and she was 18 years old at that time. She disclosed that on the relevant date, she eloped with the accused to get married with him as they were having love affair. Thereafter, they got married and stayed together in the house of the accused. This witness further disclosed that since their marriage they are living together as husband and wife. Thereafter, the members of the Child Line recovered

her and brought her to their office. P.W.1 was sent to Women's' Home, Jalukbari and her statement was recorded by the Child Line. P.W.1 also revealed that at present they are staying together and they have a 6 months old male child.

- 9. P.W.3, Abu Bakkar Siddique and P.W.4, Ahed Ali does not know anything about the incident.
- 10. P.W.5, Dr. Netramoni Kakati stated that on 18.01.2018, he received a prayer for medical examination of the victim in connection with Boko P.S Case No. 525/17 U/S-366/494 of IPC R/W Section 4 of the POCSO Act and Section 9 of the Protection of Child Marriage Act. P.W.5 stated that P.W.1 refuses to do her medical examination.
- 11. P.W.6, S/I Amiya Goswami has deposed that on 07.10.2017, O/C, Boko P.S on received an ejahar, directed him to investigate the case. Accordingly, he visited the place of occurrence, prepared the sketch-map, search for the accsued and the victim but he did not find them. On being transferred, he handed over the CD to O/C, Boko P.S.
- 12. P.W.7, S/I Mintu Boro is the investigating Officer, who did further investigation of the case being Boko P.S Case No.525/17. He recorded the statement of the victim and sent her for medical examination but she refused. P.W.7 sent the victim for recording her statement U/S164 Cr. P.C. Accused—Rafique Ullah Ahmed surrendered before the police on being granted anticipatory bail by the Hon'ble Gauhati High Court. Thereafter on completion of investigation, he submitted charge-sheet U/S-366/494 of IPC R/W Section 9 of Protection of Child Marriage Act and Section 4 of the POCSO Act, 2012. Ext.1 is the charge-sheet. Ext. 1 (1) is his signature.
- 13. From the evidence of the victim girl (P.W.2) it is clear that she was not a minor at the time of occurrence. She revealed that she attained 18 years of age at the time of incident. So, Section 9 of Protection of

Child Marriage Act levelled against the accused is not attracted in this case.

- 14. Further, it is seen from the evidence of the victim (P.W.2) that on the day of the incident, she eloped with the accused to get married with him as they were having love affair. It is further clear from the evidence of the victim (P.W.2) that at present they are staying together as husband and wife and they also have a 6 months old male child.
- 15. So, the accused is not implicated by the victim in any manner. Victim was not taken away forcibly by the accused on the date of incident. She was a major at the time of incident and went with him on her own sweet will out of love affairs between them. Then, they got married and stayed together in the house of the accused with their minor child. Hence, the offences U/S-366 (A) / 494 of IPC and Section 4 of the POCSO Act, 2012 are not attracted at all against the accused person.
- 16. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person. Accordingly, the accused—Rafique Ullah Ahmed is held not guilty and he is acquitted of the offence U/S-366 (A) / 494 of IPC R/W Section 9 of Protection of Child Marriage Act and Section 4 of the POCSO Act, 2012 and set at liberty forthwith.
- 17. His bail bond shall remain in force for next 6 (six) months U/S-437(A) Cr. P.C.
- 18. The case is disposed of.

19. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this 06^{th} day of November, 2019.

Special Judge, Kamrup, Amingaon

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

APPENDIX

Prosecution Witness:

P.W.1, Anshad Ali

P.W.2, is the victim girl

P.W.3, Abu Bakkar Siddique

P.W.4, Ahed Ali

P.W.5, Dr. Netramoni Kakati

P.W.6, S/I Amiya Goswami

P.W.7, S/I Mintu Boro

Prosecution Exhibit

Ext.1 -- Charge-sheet.

Special Judge,

Kamrup, Amingaon