IN THE COURT OF THE SPECIAL JUDGE :::::: KOKRAJHAR

Special Case No.15/2016

State of Assam

Versus

Md Emanur Hoque Accused

Present: Smt.Mitali Thakuria, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. Advocate for the accused: Mr N.Sarkar

Evidence recorded on : 09.6.17, 30.6.17, 15.9.17 & 19.02.18

Argument heard on : 20.7.2018

Judgment delivered on: 03.8.2018

J U D G E M E N T

1. The prosecution story in brief is that on 02.9.2014 at about 9 P.M. the accused person Ajida Bibi called the informant Sopiya Khatun to her own house and she was busy in talking with the informant when the accused Emanur Hoque came inside the house of the accused Ajida Bibi and showing dagger he committed rape on her throwing her on the bed. Later on she informed her parents and when the matter was intimated to the family members of the accused they threatened to kill her. Hence, the first information report.

- 2. On receipt of the first information report in Bogribari P.S., a case has been registered under Bogribari P.S. case No.75/14 under sections 120(B)/114/506 IPC, R.W. section 4 POCSO Act and case was endorsed to SI Gagan Das for investigation. During investigation the I.O. visited the place of occurrence and recorded the statement of the witnesses, medically examined the victim and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under sections 120(B)/114/506 IPC, R.W. section 4 POCSO Act against the accused Emanur Hoque. Relevant copies also furnished to the accused and my learned Predecessor framed the charge against the accused under section 4 of POCSO Act finding a primafacie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as nine number of witnesses including the informant/victim and M.O. as follows:

PW 1 Mosstt Sopiya Khatun

PW 2 Mosstt Momina Bibi

PW 3 Mosstt Delbhanu

PW4 Md Sofear Rahman

PW5 Md Aijal Hoque

PW5 Dr Sushma Brahma

PW 6 Md Safur Ali

PW7 Md Nur Mahammad Ai

PW8 Md Abu Sapial

PW9 SI Gagan Ch.Das

4. The accused person took the plea of total denial while recording his statement under section 313 of Cr. P.C. and declined to adduce any evidence.

5. **Point for determination:**

Whether the accused committed the offence of penetrative sexual assault to the minor victim?

Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and hearing arguments from both sides case is decided as follows:-
- 7. PW1 lodged the first information report with the allegation that the accused Emanur Hoque forcibly entered into the house of the accused Ajida Bibi and forcibly committed rape on her. PW1 while deposing before the court has stated that she had love affair with the accused and on the day of the incident accused forcibly kidnapped her in the night and took her inside the bamboo garden and committed rape on her. The incident took place at about 7 P.M. and thereafter she lodged the first information report. From her cross evidence it reveals that she filed the case against the accused with the allegation of rape as the accused refused to marry her. Subsequently, they got married and at present she is residing with the accused as husband and wife.
- 8. PWs 2, 3 and 5 do not know much about the occurrence but, they heard about the marriage between the parties who are residing as husband and wife.
- 9. PW4 father of the informant/victim and as per him also accused kidnapped his daughter in a day time and committed rape on her taking her inside the jute field near the bank of river. As per him also his daughter lodged the case as the accused refused to marry her.
- 10. PWs 6, 7 and 8 also do not know anything about the occurrence of rape or kidnapping.

- 11. PW5 is doctor who examined the victim and accordingly she opined that the age of the victim was above 16 years but below 18 years at the time of examination and she further opined that the victim might have been exposed to sexual intercourse.
- 12. PW9 I.O. of this case who accordingly visited the place of occurrence, recorded the statement of the witnesses, medically examined the victim and collecting the medical report he filed the charge sheet against the accused under section 4 of POCSO Act.
- So from the testimonies of the prosecution witnesses, it is seen 13. that except PW1 and PW4 none of the witnesses supported the prosecution case and they do not know anything about the incident. PW5 is doctor and PW9 is I.O. of this case. So only the vital witnesses of the prosecution case are PW1 informant of the case and PW4 father of the victim. But, these vital witnesses contradicted their statements each other on some very vital points. As per PW1 the incident took place in the night when she was kidnapped by the accused took her to bamboo garden and committed rape on her. At the same time as per PW4 his daughter was kidnapped at day time and accused committed rape on her inside the jute cultivation near the bank of river. So such major contradiction or discrepancy in the evidence of two vital witnesses create reasonable doubt in the veracity of the prosecution case. Further it is seen that the FIR is silent in regard to kidnapping of the victim but while deposing before the court both PW1 and PW4 alleged that the accused kidnapped the victim and committed rape on her. Further from the testimonies of PW1 and PW4, it reveals that the FIR was lodged against the accused only because he refused to marry the victim and at present their marriage was solemnised and they are living as husband and wife.

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- 14. Coming to the age of the victim, it is seen that there is no supporting or authenticate document to prove the age of the victim and as per radiologist she was around 16/18 years at the relevant time of incident. It is settled principle law radiological is considered with error of two years and it goes in favour of the accused. From the discussion it also reveals that the prosecution not only failed to prove the age of the victim but also failed to prove rape of victim on the day of incident. More so, it is seen that neither PW1 nor PW4 have any grievances against the accused as the victim already got married with the accused and they are living peacefully as husband and wife.
- 15. In view of the discussion made above, it is held that the prosecution could not establish the case against the accused Emanur Hoque under section 4 of the POCSO Act beyond all reasonable doubt and hence giving the benefit of doubt I hereby acquit the accused and set him at liberty forthwith.
- 16. The judgment is delivered in the open court and given under my hand and seal of the court on this 03rd August/2018 at Kokrajhar court.

Dictated & corrected by me

Special Judge,

Special Judge,

Kokrajhar

Kokrajhar