

Special (POCSO) Case No. 23/2018.

(U/S - 366(A) of IPC read with Sec. 4 of POCSO Act, 2012.)

State of Assam

-Versus-

Sahab Uddin Mazumder

...... Accused.

PRESENT: Shri D. Bhattacharjee, Special Judge, Hailakandi.

Appearance and particulars:-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri K.U. Laskar, Ld. Advocate.

Date of recording evidence

:- 19.11.2019.

Date of recording statement u/s 313, CrPC :- 21.11.2019.

Date of Argument

:- 21.11.2019.

Date of Judgment

:- 21.11.2019.

JUDGMENT

The prosecution case, in brief, is that on 04.10.2018 the informant Must. Sajna Begum Laskar lodged an Ejahar with the O/c, Lala Police Station alleging that she is a poor widow and has been pulling out her livelihood alongwith the children under great hardship. On 17.09.2018 at about 4 PM taking advantage of her absence in the house, the accused person Sahab Uddin Mazumder alongwith others came to her house and committed rape on her minor daughter, the victim.

Contd....P/2.

- On receipt of the ejahar, the same was registered as Lala PS Case No. 485/2018 was registered under Sec 363/376/294/323/506/34, IPC read with Sec. 4 of the POCSO Act, 2012. During investigation, police visited the place of occurrence, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC and after completion of investigation submitted charge sheet against the accused person Sahab Uddin Mazumder under Sec. 366, IPC.
- 3. On appearance of accused person Sahab Uddin Mazumder, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Sahab Uddin Mazumder under Sec.366(A) of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined the victim and her mother, the informant only. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations. The defence did not adduce any evidence.
- 6. Heard argument of both sides. Perused the record.

7. POINTS FOR DETERMINATION :-

(i) Whether the accused person on 17.09.2018 at about 4 PM at village Chandrapur Pt. I under Lala PS induced the victim, the daughter of the Contd.....P/3.

Sessions Judge

informant to go with him with intent that she might be or knowing that she would be forced or seduced to illicit intercourse and thereby, the accused has committed the offence punishable under Sec. 366(A), IPC?

(ii) Whether the accused person committed penetrative sexual assault on the victim, the minor daughter of the informant, and thereby, the accused person has committed the offence punishable under Sec. 4 of the POCSO Act,2012?

DISCUSSION, DECISION AND REASONS THEREOF :-

Mazumder is her husband. About one year back, one day without informing her mother, she eloped with the accused out of love affair and married the accused but her mother lodged the case. It is further deposed by the victim that at the time of incident, she was aged 18 years and she has been living with the accused as his wife. During investigation, police got her medically examined and also got her statement recorded by Magistrate vide Ext. 1 and Ext. 1(1) is her signature.

In cross examination, the victim has stated that she has got no allegation against the accused and she made her statement before the Magistrate on being influenced by her relatives.

- The PW. 2, Sajna Begum Laskar, the informant, has deposed that about one year back one day at about 4 PM, her daughter i.e. the victim went missing from her house and thereafter, she made search for her and came to know that she eloped with the accused and as such, she filed the FIR vide Ext. 2 and subsequently, she learnt that the victim had love affair with the accused but thereafter, she gave the marriage of the victim with the accused and during their conjugal life, they have been blessed with a child. It is further deposed by the informant that she has got no allegation against the accused.
- In the backdrop of the evidence of the victim, it is surfaced that at the relevant time, the victim was major and she had love affair with the

Sessions Judge

Contd.....P/4.

Special (POCSO) Case No. 23/2018.

-4-

accused and out of that, she eloped with the accused and married him and since then, she has been living with the accused as his wife having a child out of their wedlock. The victim has also added in her evidence that on being influenced, she made her statement before the Magistrate. It has also been made clear in the evidence of the informant that on the relevant day, finding the victim not in the house, the informant searched for her but could not find her out and as such, she filed the case against the accused but when, the informant learnt that the victim had love affair with the accused, she gave the marriage of the victim with the accused and at present, they are the parents of one child. As such, when the victim herself, whose evidence bears much significance to decide such type of cases, has not supported the prosecution case, I do not find any cogent reason to hold the accused person guilty for the commission of the offence, alleged.

- In fine, the accused person Sahab Uddin Mazumder is acquitted of the offence charged under Sec. 366(A) of the IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- The bail bond of the accused stands discharged.
- The Special (POCSO) case is disposed of accordingly.

The judgment is delivered today, on this the 21st day of

November, 2019.

Special Judge, Hailakandi.

<u>Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.</u>

Contd......P/5.

Special (POCSO) Case No. 23/2018.

-5-

Appendix :-

Oral evidences :-

PW. 1, the victim,

PW. 2, the informant.

Documentary evidence :-

Nil.

Defence did not adduce any evidence.

Special Judge, Hailakandi