## IN THE COURT OF THE SPECIAL JUDGE, BARPETA

# Special POCSO Case No. 43/2018 U/S 366(A)/34 IPC & Section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-12.03.2019

State of Assam

- Vs -

Babul Ali @ Ahamed

Jafar Khan @ Badal..... Accused

Date of Recording Evidence on - 19.06.2019, 20.06.2019 & 30.10.2019

Date of Hearing Argument on - 30.10.2019

Date of Delivering the Judgment on - 30.10.2019.

Appearance :

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused------Dharani Talukdar, Ld. Advocate.

## JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 20.01.2017 one Billat Hussain lodged an FIR in Kalgachia P.S. alleging inter alia that on 16.01.2017 at about 8:45 am his daughter namely (X & Y real name withheld) went to school but did not returned home. Informant cause a drastic search for them, but could not traced them out. Hence the case for taking action in accordance with law.
- 2. Based on the information a case being Kalgachia P.S case no 54/17 P.S. u/s 366(A) IPC was registered and S.I. Tarun Chandra Boro was entrusted to investigate the case. Subsequently, section 4 of POCSO Act was added.

- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses including the victim girl u/s 161 Cr.P.C., drew sketch map, sent the victim girl for medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C. and also seized the registration card of Dilwara Khatun of the Board of Secondary Education, Assam.
- 4. On conclusion of investigation, I/O finally laid the charge sheet against accused u/s 366(A) IPC and section 4 of POCSO Act.
- 5. During the course of time, when accused appeared in court. Then on compliance of section 207 Cr.P.C. charges u/s 366(A)/34 IPC and section 4 of POCSO Act were framed after hearing both sides. The particulars of the offences on being read over and explained, accused persons pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution examined as many as 3 witnesses including the informant, alleged victim and medical officer namely- Dr. Mamata Devi as PW-1, Bilat Hussain as PW-2 and the victim girl (X) as PW-3 respectively. However, considering the nature and quality of evidence adduced by the star witnesses giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

#### 8. Now point for determination ;-

Whether on 16.01.2017 accused Babul Ali and Jafar Khan in furtherance of their common intention induced the victim girl to go from school to other place/places knowing it to be likely that she will be forced or seduced to illicit intercourse with another person including accused as alleged?

Whether on the same day and time accused Babul Ali and Jafar Khan committed penetrating sexual assault on the victim girl as alleged?

## 9. Discussion, Decision and reasons for such decision:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. Before going to discuss the evidence on record it would be useful to refer section 366-A IPC.

"Section 366-A IPC: procreation of minor girl:`-Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- **"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 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.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 11. On perusal of section 366-A IPC the following ingredients are found:
  - I) The accused induces a minor girl below the age of 18 years;
  - II) she was forced to go from any place or to do any act;
  - III) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 12. Now, in the context of the offence u/s 366-A IPC let this court examine what the witnesses have said in this regard.

- 13. PW-2, the informant and PW-3 one of the alleged victim deposed that the incident occurred about 3 years back. But neither PW-2 nor PW-3 who are the informant and alleged victim can remember the date of the incident. PW-3 the alleged victim deposed that she eloped with Jafar as a result of her affairs with him and PW-2 the father cum informant deposed that one of the girl returned home after 2 days of the incident and the other after 4 days of the incident. But he failed to depose that accused persons played any role in the alleged offences of kidnapping. PW-2 & PW-3 no where stated that accused Jafar Khan and Babul Ali committed the offence of kidnapping the sisters while going to school. Therefore, from the evidence of PW-2 & PW3 the ingredients of the offence u/s 366(A)/34 IPC are not at all established not to speak of having committed the offence by them in furtherance of their common intention. As it appears the victim herself negated the prosecution case. Therefore, there is no corroboration in her evidence.
- 14. Now, on perusal of the offence u/s 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d).
- 15. PW-2, the informant cum father of the victim girl in his evidence deposed that about two years back his daughter disappeared from house without intimation to him for which he filed the present case against the accused person on suspicion.
- 16. On careful evaluation of the evidence of PW-1, PW-2 and PW-3 what crystallizes before this court is that the alleged victim girls eloped with their lovers on their own will without any force or pressure because they fell in love with accused persons. Even though, in the FIR (Ext.1) it was alleged that accused kidnapped the girls by force, but there is no substantive evidence to that effect in the mouth of three prosecution witnesses. So, the ingredients of the offence u/s 366(A) IPC and section 4 of POCSO Act appears to have not attracted in the present case. Moreover, the age of the victim has also not been proved. There is no evidence at all on record to show that accused had committed any penetrative sexual assault on the victim girl. Given the nature of evidence available on record going for recording evidence of remaining witnesses will not bring any positive result. None of the two prosecution witnesses have spell out a single word against the accused persons.
- 17. Moreover, PW-1 Dr. Mamata Devi on examination of victim Dilwara Khatun found no sign of any recent sexual intercourse with the victim. Apart from this the age of victim

was found above 14 years and below 16 years but in order to ascertain the actual age of the victim no credible documents have been proved by prosecution.

- 18. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Babul Ali and Jafar Khan u/s 366(A)/34 IPC and section 4 of POCSO Act as there was absolutely no materials emerged in the mouth of the three prosecution witnesses for having found the accused persons guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Babul Ali and Jafar Khan from the offences u/s 366(A)/34 IPC and section 4 of POCSO Act on the ground of insufficient evidence and set them at liberty forthwith.
- 19. The terms of bail bond of accused persons are extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 20. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 21. Let the case record be consigned to record room after completing the formalities.
- 22. Given under my hand and seal of this Court on this 30th day of October, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

### **APPENDIX**

1. The prosecution has examined the following 3 nos. of witnesses:-

PW-1 = Dr. Mamata Devi, the medical officer.

PW-2 = Bilat Hussain, the informant.

PW-3 = the victim girl.

2. The prosecution has exhibited the following documents:

Ext. 1 =the medical report.

Ext.1(1) = is the signature of doctor.

Ext. 2 = the medical report

Ext.2(1) = is the signature of doctor.

Ext. 3 =the FIR.

Ext.3(1) = is the signature of informant.

Ext. 4 = the seizure list.

Ext.4(1) = is the signature of informant.

Ext. 4 (A) = the original registration certificate of Dilwara Khatun.

Ext.4(AA) = is the photocopy of the said registration certificate compared with original.

Ext. 5 = the seizure list.

Ext.5(1) = is the signature of informant.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.