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

## Special Case No.34/2019

State of Assam

Versus

- (1) Md Momin Hussain
- (2) Md Abul Kalam ..... Accused

Present: Smti Mitali Thakuria, Special Judge, Kokrajhar

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

Ld. advocate for the accused: Mr N. Roy

Evidence recorded on : 25.7.2019 and 11.9.2019

Argument heard on : 30.9.2019

Judgment delivered on: 23.10.2019 (Judgment could not be

delivered due to absence of accused on the date fixed).

#### J U D G M E N T

1. The prosecution story in brief is that on 19.4.2019 the informant Smti Chintamoni Pahan lodged the first information report stating to the effect that on 18.4.2019 at about 4 P.M. the accused persons namely Abul Kalam and Momin Hussain kidnapped her minor daughter Dipali Pahan from her house. Thereafter, the police recovered the victim from the possession of the accused. It is also stated that the accused Abul Kalam committed rape on the victim for two days. Hence, the first information report.

- 2. On receipt of the first information report in Fakiragram Police Station a case has been registered as Fakiragram P.S. case No.54/19 under sections 366(A)/34 of IPC, Read With section 4 of POCSO Act and the case was endorsed to the S.I. Ajoy Kr. Saha for investigation. During investigation the I. O. visited to the place of occurrence, arrested the accused persons Abul Kalam and Momin Hussain, medically examined the victim, recorded the statement of the witnesses. The statement of the victim was recorded under section 164 Cr.P.C. and after ascertaining the minor age of the victim, the charge sheet has been filed by I.O. under sections 366(A)/34 of IPC, read with section 4 of POCSO Act against the accused Abul Kalam and under section 366(A)/34 against the accused Momin Hussain. Relevant copies accordingly furnished to the accused persons by this court and the charge under section 366(A)/34 of IPC, read with section 4 of POCSO Act were framed against the accused Abul Kalam and under section 366(A)/34 of IPC was framed against the accused Momin Hussain finding a prima-facie case. The charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 5 (Five) number of witnesses including the informant and the victim as follows:-

P.W. 1 Smti Chintamoni Pahan (Informant),

P.W. 2 Miss Dipali Pahan (Victim),

P.W. 3 Sri Tlu Pahan,

P.W.4 Sri Kinu Urao and

P.W.5 Sri Atowa Pahan

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

# 5. **Points for determination:**

- (1) Whether the accused Abul Kalam induced the victim Dipali Pahan to go with him and with intent that there is likelihood that Dipali Pahan may be seduced or illicit intercourse with another person?
- (2) Whether the accused Abul Kalam committed the offence of penetrative sexual assault to the minor victim Miss Dipali Pahan?
- (3) Whether the accused Momin Hussain induced the victim Dipali Pahan to go with him and with intent that there is likelihood that Dipali Pahan may be seduced or illicit intercourse with another person?

#### Discussion, Decision and Reasons thereof:

- 6. To arrive at a just decision I have thoroughly perused the evidences of prosecution witnesses, assessed them and heard argument put forwarded of both sides and the case is decided as follows:-
- 7. PW1, informant of this case deposed that the incident took place about three months ago. At about 7 P.M. both the accused persons came to their house as she addressed them as her brothers and after having tea in her house they were roaming near their house with her daughter Dipali Pahan. Thereafter, one police officer met them and on suspicion the police took them to the police station and at about 9 P.M. she got information and then she came to police station when the police wrote something on a paper

and asked her to put her signature. She does not know what was written in the first information report and she put her signature in the FIR as per instruction of the police. In her cross she stated that the accused persons used to come her house and she also visited to the house of the accused as she addressed them as her brothers.

- 8. PW2, victim of this case deposed that the incident took place about three months ago and on the day of incident her mother invited her uncles to have a cup of tea and after having tea they were roaming on the road when the police vehicle came and took her and accused Abul Kalam to the P.S. Thereafter the police informed her mother and after arrival of her mother the police handed over her to her mother and on the next day she was medically examined. In her cross she stated that she gave her statement before the Magistrate as per instruction of some people and police officer. The accused Abul Kalam did not commit rape on her and accused Momin Hussain did not kidnap her.
- 9. PW3 deposed in his evidence that the incident took place about 6/7 months ago at night when he was sleeping one Kinu Urao asked him to wake up and told him that the daughter of Chintamoni Pahan and two Muslims boys were taken by the police and he came with Kinu Urao and informed about the matter to the informant Chintamoni Pahan.
- 10. PW4 stated in his evidence that the incident took place in the night at about 10.30/ 11 P.M. When he was sleeping he received a phone call from Fakiragram P.S. who intimated him that the daughter of Chintamoni Pahan and two other persons were brought in the P.S. and he made contact with Tulu Pahan and visited to the house of the informant and informed about the matter.

- 11. PW5 deposed in his evidence that the incident took place in the month of April of this year and on the next day morning when he found missed call of the Officer-in-charge of Fakiragram P.S. he made contact with him and then police asked him to go to the police station and when he reached the P.S. the police informed him that on the previous night he brought the daughter of Chintamoni Pahan with two other persons when they were found in the bike in the night. He does not know about the incident. He further deposed that the police seized birth certificate of the victim in his presence and he also put his signature in the seizure list. In his cross he stated that he does not know the victim girl.
- 12. From the testimonies of prosecution witnesses, it is seen that the most vital witness of the prosecution i.e. the informant and the victim of the case did not support the prosecution version. The informant does not know the contents of the first information report. In the same time the PW2 (victim) also deposed that she gave her statement only as per instruction by police. These two vital witnesses did not bring any allegation of kidnapping or penetrative sexual assault against the accused persons.
- 13. So from the detail discussion made above, it is seen that the prosecution could not establish the case against the accused Abul Kalam under section 366(A)/34 of IPC, Read With Section 4 of POCSO Act and under section 366(A)/34 of IPC against the accused Momin Hussain beyond all reasonable of doubt and hence giving the benefit of doubt, I hereby acquit the accused persons and set them at liberty forthwith.

The judgment is delivered in the open court and given under my hand and seal of the court on this 23rd October/2019 at Kokrajhar court. Dictated & corrected by me

Special Judge, Kokrajhar Special Judge,

Kokrajhar