IN THE COURT OF SPECIAL JUDGE, BARPETA

Special POCSO Case No. 70/2018
(Arising out of Barpeta Road P.S.Case No.360 of 2017)
U/S 366(A)/447/120(B) IPC R/W section 4 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 07.12.2018

State of Assam

- Vs -

1. Ruhul Amin

2. Saiful Islam.....Accused persons.

Date of Recording Evidence on - 27.05.2019, 03.07.2019.

Date of Hearing Argument on - 30.07.2019. Date of Delivering the Judgment on - 30.07.2019.

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. Abu Shahid Mandal. Ld. Advocate.

JUDGMENT

- 1. The brief fact of the prosecution case, is that on 03.07.2017 one Alauddin lodged an ejahar in the Barpeta Road police station alleging inter-alia that accused No.1 named in the FIR has been engaged as tutor for the daughter of the informant aged about 13 years. But after few days accused in the name of tuition tutored her regarding love affairs instead of the lessons. Coming to know about this fact accused was warned and tuition was stopped. But on 02.09.2017 at 12 at night while the daughter of informant coming out of his residence in response to call of nature accused No.1 with the help of accused No.2 named in the FIR took her by force in a vehicle bearing Registration No.As 15 K 8776 and kept her confined somewhere else. It is alleged that accused may subject her sexual torture. Hence the case.
- 2. Following the information, a case being Barpeta Road P.S. case No.360/17 u/s 120(B)/447/366-A IPC and section 4 of POCSO Act was registered and investigated the case.

- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses, forwarded the victim girl to court for recording her statement u/s 164 Cr.P.C. The girl was also sent for medical examination, arrested the accused persons and on conclusion of investigation police finally laid the charge sheet against accused Ruhul Amin and Saiful Islam u/s 120(B)/447/366-A/34 IPC and section 4 of POCSO Act with a view to stand trial.
- 4. In due course, when accused persons entered their appearance in court, having complied with the provision of Section 207 Cr.P.C. hearing the learned lawyers appearing for both sides and perusing the materials available on record, having found a prima facie case charges u/s 120(B)/447/366-A IPC and Section 4 of POCSO Act were framed. The substance of the offences on being read over and explained accused persons pleaded not guilty and claimed trial.
- 5. During the course of rial, the prosecution examined only 5 witnesses including the parents of the victim girl (X), the victim herself and the I/O.
- 6. Concluding prosecution evidence accused persons were Examined u/s 313 Cr.P.C. but they denied having their involvement with the alleged offences. Their plea is total denial of the prosecution case. As such, on being asked, accused persons declined to adduce defence evidence.

7. **Now point for determination** ;-

- 1. Whether on 02.09.2017 at about 12 at night accused induced the victim girl (X) to go from her house to any other place/places intending that or knowing it to be likely that she will be forced or seduced to illicit intercourse with any other person including accused as alleged?
- 2. Whether on the same day and time accused committed criminal trespass upon the property of the informant with a view to commit the offence of kidnapping as alleged?
- 3. Whether on the same day and time accused persons agreed to kidnap the daughter of the informant and pursuant to the said agreement to commit the said offence of kidnapping removed the girl from her residence to other places as alleged?
- 4. Whether on the same day and time accused Ruhul Amin committed penetrative sexual assault as alleged?

8. **Discussion, Decision and reasons for such decision** :-

I have heard the learned lawyers in brief and gone through the evidence available on record.

9. Before I proceed to examine the evidence it is apposite to refer the provision of

Section 366-A IPC and Section 4 of POCSO Act.

<u>"Section 366-A IPC: procreation of minor girl:`-</u>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."

- 10. 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.
- 11. **Section 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 than seven years but which may extend to imprisonment for life, and shall also be liable to fine.
- 12. In the context of the definition of offences u/s 366-A IPC and Section 4 of POCSO Act it is to be seen whether the evidence of the prosecution witnesses are sufficient to hold the accused persons guilty.
- 13. In his evidence PW-1 Alauddin, the informant deposed that he knows the accused persons present in court. His daughter (X) has been reading in Class VII in Bhaluki Salmara Anchalik Jatiya Vidyalaya and accused Ruhul Amin was engaged as private teacher, but without his knowledge accused fall in love with his daughter as a result she eloped with Ruhul Amin at 12 'O' Clock at night. Following the information he lodged an FIR. Pursuant to which his daughter was recovered but his daughter told him that she voluntarily went with accused Ruhul Amin.
- 14. In his cross examination he stated that accused is his next door neighbor and his daughter has access to his house and she voluntarily went with him.
- 15. PW-2 Khudeja Khatun deposed that accused being her neighbor and relative visited her house and her daughter fall in love with Ruhul Amin and eloped with him.
- 16. In her cross examination she stated that house of Ruhul Amin is adjacent to her house but he did not kidnap her daughter.
- 17. PW-3 is the victim girl (X) who also deposed that she fall in love with Ruhul Amin who was engaged as her private tutor. But later police recovered her from the house of Ruhul Amin. During investigation she deposed statement before Magistrate u/s 164 Cr.P.C. Ext.2 is the statement before Magistrate and Ext.2(1), 2(2) and 2(3) are her signatures.
- 18. In her cross examination she stated that she eloped with Ruhul Amin on her own but due to misunderstanding her father filed the case.
- 19. PW-4 Billal Hussain stated that he do not know the accused persons. Moreover,

in his cross examination he stated that accused Ruhul Amin did not kidnap the daughter of informant.

- 20. Out of these four prosecution witnesses three are family members being father, mother and daughter i.e. the alleged victim girl. PW-4 is the independent witness who expressed his ignorance about the incident.
- 21. PW-5 Gour Chandra Mondal is the investigating officer who also deposed that on being entrusted he investigated the case and on completion of investigation laid the charge sheet against the accused persons. He denied that the girl was tutored to say before police.
- 22. On careful examination of the entire prosecution evidence available on record it is seen that the evidence of PW-1, PW-2 and PW-3 are halfhearted one. They are not willing to reveal the truth. The evidence of PW-4 though independent witness but he is not aware about the involvement of the accused in the case. PW-5 is the I/O. His evidence is also stereotype one. In the absence of the evidence of the prosecutrix and other prosecution witnesses the evidence of I/O does not help in arriving at a just decision in the case.
- 23. From the evidence of the prosecution witnesses it is seen that the alleged victim girl went with accused Ruhul Amin on her own. She nowhere stated in her evidence that accused forced her to move from one place to another intending or knowing it that she will be forced or seduced to illicit intercourse. In her evidence she has not stated anything about having any sexual relation with the accused persons nor she said anything that accused took her by force. None of the prosecution witnesses have stated that accused persons committed criminal conspiracy to kidnap the victim girl and also committed criminal trespass. There is no indication in the evidence of the prosecution witnesses that accused entered into the house of informant or trespassed into the boundary at the time of committing alleged kidnapping. Rather, none of the prosecution witnesses have spell out the name of accused Saiful Islam that he made any criminal conspiracy to accused Ruhul Amin to kidnap the victim girl. Moreover, the victim girl also in her evidence nowhere stated that accused have physical relation with her, not to speak of other prosecution witnesses. Therefore, for committing offence of sexual assault on the victim girl by accused there is no evidence at all. There is also no evidence to show that other accused Saiful Islam did any such act/acts which constitute the offences u/s 366-A/447/120(B) IPC. Considering all, this court do not find substance u/s 366-A/120(B)/447 IPC and Section 4 of POCSO Act.
- 24. In view of the foregoing discussion and reason, both the accused Ruhul Amin and Saiful Islam are acquitted from the offences u/s 366-A/447/120(B) IPC and section 4 of POCSO Act on the ground of benefit of doubt and set them at liberty forthwith.
- 25. 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.

- 26. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 27. Let the case record be consigned to record room after completing the formalities.
- 28. Given under my hand and seal of this Court on this 30th day of July 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 5 nos. of witnesses :-
- PW-1 = Alauddin, the informant.
- PW-2 = Khudeja Khatun.
- PW-3 = Victim girl(X).
- PW-4 = Billal Hussain.
- PW-5 = Gour Chandra Mondal, the I/O.
- 2. The prosecution has exhibited following document :-
- Ext.1 = is the FIR.
- Ext. = 1(1) is the signatures of informant.
- Ext.2= is the statement u/s 164 Cr.P.C. of the victim girl.
- Ext.2(1), 2(2) and 2(3)= are the signatures of victim (X).
- Ext.3= is the sketch map.
- Ext.3(1) = is the signature of I/O.
- Ext.4= is the charge sheet.
- Ext.4(1) = is the signature of I/O.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.