IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON

District: Kamrup, Amingaon Present: Smti. B. Kshetry Special Judge, Kamrup, Amingaon Special Sessions (POCSO) case No.42/2018 U/S- 366 (A)/376 of IPC R/W Section 4 of the POCSO Act, 2012 State of Assam -Versus-Abdur Rofik @ Abdul Rofik s/o-Md. Hasen Ali Resident of vill –No.2 Dakhin Rangapani P.S.-Boko Dist- Kamrup -----Accused Appearance: Mr. A.K. Baruah. Ld. Addl. Public Prosecutor -----for the State Mr. A. Paramanik, Ld. Advocate the -----for accused Date of evidence: 05.09.2018, 08.02.2019, 09.04.2019,

Date of Argument: 18.01.2020.

03.06.2019, 24.10.2019 and 02.01.2020.

Date of Judgment: 27.01.2020.

JUDGMENT

- 1. The prosecution case, in brief, is that on 18.06.2018, informant Halem Ali lodged an ejahar alleging that on 17.06.2018 at about 2.00 p.m, the accused person- Abdur Rofik @ Abdul Rofik had kidnapped his minor daughter, while she was going towards Mahtoli Bazaar from her house. Hence, the case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 407/2018 U/S-366 (A)/376 of IPC R/W Section 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the accused person U/S-366 (A)/376 of IPC R/W Section 4 of the POCSO Act, 2012.
- 3. The case was duly transferred and this Court after hearing both the parties, framed charges U/S- 366 (A)/376 of IPC R/W Section 4 of the POCSO Act, 2012 against accused— Abdur Rofik @ Abdul Rofik. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as 7 (seven) numbers of witnesses including the informant, victim and I/O. Statement of the accused person U/S-313 Cr. P.C is recorded. He denied committing the offence and declined to adduce evidence.

5. POINT FOR DETERMINATION:

(I) Whether the accused person on 17.06.2018 at about 2.00 p.m induced the minor victim girl under the age of eighteen years to go from any place or to do any act with intent that she may be, knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, and thereby, committed an offence of punishable U/S 366 (A) of IPC?

- (II) Whether the accused person on the same date, time and place committed rape upon the minor daughter of the informant without her consent, and thereby, committed an offence of punishable U/S 376 of IPC?
- (III)Whether the accused person on the same date and time committed penetrative sexual assault on the informant's minor daughter and, thereby, committed an offence punishable U/S-4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined as many as 7 (seven) numbers of witnesses.
- 7. P.W.1, Halem Ali is the informant of this case. He knows the accused person— Abdur Rofik @ Abdul Rofik. Victim is his daughter. He stated that victim was 15 years old at the time of incident. The incident took place about 3 months ago. At the relevant time, P.W.1 was not at home. When he returned home at 4.00 p.m, his wife—Kamala Khatun told him that accused had took away the victim girl in a vehicle from the road. After coming to know about the incident, P.W.1 went to enquire about the incident from the guardian of the accused person. They told him that they did not know anything and rang the accused person. The accused person then told them that he did not take away the victim. Thereafter, P.W.1 lodged the ejahar. Police recovered the victim and the accused person from Kokrajhar.

In his cross-examination, P.W.1 deposed that he lodged the ejahar after 3 days of the occurrence. P.W.1 stated that he did not state in the ejahar the reason for delay in lodging the ejahar. P.W.1 stated that he did not know if there was love affair between the accused and the victim and if she had gone away with the accused on her own will.

8. P.W.2, is the victim. She stated that informant of this case is her father. She know the accused person— Abdur Rofik @ Abdul Rofik. The incident took place 1/1 ½ years ago at about 2.00 p.m. P.W.2 stated that she had gone to the Meena Bazar near her house, then accused—Rofik and one Jalaluddin meet her and asked her to go out for roaming with them in a Maruti car. Then they came to Jalukbari and then she was taken to Silapathar, Baksa District by bus. They stayed in the house of one—Sayeb Ali, who is the father-in-law of accused—Rofik's friend. They stayed there for 3 days. Accused—Rofik married her before Kazi. Jalaluddin was the Wahil in the marriage. Thereafter, they both stayed together as husband and wife for one day. Thereafter, they were brought back by the sister-in-law and brother (cousin) of the accused and they were kept in the house of Akabor. Then, they were handed over to police of Sontoli O.P under Boko P.S. Police recorded her statement. Police brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. Ext.1 is the statement. Ext. 1 (1) is her signature.

In her cross-examination, P.W.2 disclosed that there were many people in the Mela held in Sontoli Bazar. She further disclosed that she told the police as well as the Magistrate that she had loving affairs with the accused since 2 years. As the accused took her away from the 'Mela'. She did not make any 'hullah'. P.W.2 stated that she did not tell the police as well as the Magistrate that she was taken to Jalukbari and to Baksa District by the accused person. P.W.2 disclosed that she did not raise any hue and cry while she was taken to Baksa district in a bus by the accused person. She stated further that there is

land dispute between them and the accused person. P.W.2 did not know if her father gave the ejahar against the accused out of grudge.

9. P.W.3, Abu Shama Ahmed knows both the parties including the victim. She stated that the incident took place about 8/9 months ago. Victim was 14/15 years at the time of occurrence. At the relevant time, P.W.3 was in market. He heard from his wife—Rubia Khatun that the accused took away the victim. Later, he heard that there was love affair between them. After 2 days, the victim was recovered by police. At present, victim is in her parental home.

In his cross-examination P.W.3 disclosed that he told before the police that there was love affair between them.

10. P.W.4, Soleman Ali stated that he knows both the parties. The incident took place about 9 months ago at 2.30 p.m. he stated that he heard from the village people that the accused has taken away the victim. After 3 days, the victim was recovered by police. P.W.3 further stated that he did not know much about the incident.

In his cross-examination, P.W.4 disclosed that there was love affair between the victim and the accused but he did not know if the victim went with the accused on her own will.

11. P.W.5, Sofiqul Islam knew both the parties including the victim girl. He deposed that the incident took place 10/11 months ago at 3.00 p.m. Victim was 13 years old at the time of incident. He heard from the victim's mother that victim has gone to 'Mela' at 12 noon at Sontoli Mahatoli but when she did not return home, they searched for her and later came to know that the accused had taken her away. Before the incident, accused threatened that he will take away the victim.

12. P.W.6, Jahur Uddin stated that the incident took place more than a year ago. Victim was 14 years old at that time. P.W.6 heard from the informant at night that victim had come to Mahatoli Bazar on foot alone at 2/3 p.m but from there, she went missing. Next day the ejahar was lodged. After lodging the ejahar, police recovered the victim and the accused and brought them before the police station. On enquiry, victim told him that the accused took er away forcibly and he forcibly raped her.

In his cross-examination, P.W.6 deposed that victim is his niece. He stated that he did not know if the victim eloped with the accused on her own.

13. P.W.7, ASI Anjan Das, is the Investigating Officer of this case. He deposed that on 18.06.2018, he was serving as Second Officer, Sontoli O.P. under Boko P.S. On that day, on receiving the FIR lodged by one Halim Ali in Sontoli O.P, i/c, Sontoli O.P made a G. D. Entry bearing No. 259 dated 18.06.2018 and forwarded the ejahar to O/C, Boko P.S. The case was registered as Boko P.S Case No. 407/18 U/S-341/366/34 of IPC and directed him to investigate the case. On 19.06.2018, P.W.7 recorded the statement of the informant in O.P. Accordingly, P.W.7 visited the place of occurrence. P.W.7 prepared the sketch-map of the place of occurrence, examined the witnesses. The accused and the victim girl were not found on search. Thereafter, on 20.06.2018, the victim along with the accused were handed over to the police by the relatives of the accused. P.W.7 recorded the statement of the victim. P.W.7 sent the victim to State Home, Jalukbari. Thereafter, she was sent for medical examination but she refused to do her medical examination. P.W.7 produced the victim before the Magistrate for recording her statement U/S-164 Cr. P.C. I arrested the accused and produced him before the court. I seized the Original School Certificate and handed over the same to her guardian. Thereafter, I completed the investigation and handed over the CD to i/c, Abdus Subhan Ali and he submitted the chargesheet against the accused—Abdul Rafique @ Abdur U/S-366 (A)/376 of IPC R/W Section 4 of POCSO Act. Ext. 2 is the sketch-map, Ext. 2 (1) is his signature. Ext.3 is the seizure list, Ext. 3 (1) is his signature. Ext. 4 is the charge-sheet and Ext. 4(1) is the signature of i/c, Abdus Subhan Ali, which is known to him.

In his cross-examination, P.W.9 deposed that the FIR was lodged on 18.06.2018. But the delay in lodging the FIR is not mentioned therein. As per Ext.2 the place of occurrence is mentioned as Rangapani but not in Mahatoli Bazar. The spot was shown to him by the informant. P.W.7 recorded the statement of the informant and victim in the Sontoli O.P. The School Certificate was produced by the informant and seized by him. P.W.7 did not examine the Head Master of the school, who issued the certificate. P.W.7 did not seize the School Admission Register. The School certificate was not countersigned by B.O. P.W.7 did not visit Barpeta District and Baksa District during investigation. No marriage certificate was produced by the informant and victim. P.W.7 did not examine any 'Kazi'. P.W.7 did not examine Saheb Ali and Akbar Ali. This witness revealed that P.W.1 told him that she was having love affair with the accused since last 2 years and that she eloped with him on her own will. P.W.1 did not tell him that the accused took her away from 'mela' and she raised hue and cry. P.W.6 told him that there was love affair between the victim and the accused and that the victim went away with him. P.W.6 did not tell him that the victim was taken away forcibly by the accused and that the accused raped her. P.W.7 did not know that if there was land dispute between both the parties during his investigation. P.W.4 told him that there was love affairs between the accused and the victim.

14. Perused the evidences on record. Heard the arguments of the Learned Counsels for both sides. Ld. Counsel for the accused submitted that the accused has been falsely implicated in the case and that there is no eye witness to the occurrence apart from the victim herself. Moreover, the victim refused her medical examination. The marriage document is also not produced. Further submission of the learned Counsel for the accused is that

ingredients of Section 366 A of IPC is non-existent in the instant case and therefore, the accused is liable to be acquitted.

- 15. Now, let us go through the evidence of the victim (P.W.2), who is the vital witness in this case and being the only witness, her evidence needs careful scrutiny. It comes out from her evidence that on the date of occurrence, she met the accused, who was known to her and on being asked by the accused, she went out with him for roaming to Jalukbari in a Maruti Car. Then, P.W. 2 was taken by the accused in a bus to Silapathar, Baksa, where they stayed in the house of one—Sayeb Ali for 3 days. It is in the evidence of P.W.2 (victim) that accused married her before the Kazi and one— Jalaluddin was the Wakil in the marriage and after the marriage, they both stayed together as husband and wife for one day. But, from her crossexamination, it comes out that as the accused took her away from the 'Mela' she did not make any 'hullah' . She also disclosed that she did not raise any hue and cry while she was taken to Baksa District in a bus by the accused person. She admitted in her cross-examination, that she did not tell the police as well as the Magistrate that she was taken to Jalukbari and then to Baksa District by the accused and there the accused marry her. So, the victim (P.W.2) stated these facts for the first time before the court.
- 16. From the evidence of the victim (P.W.2) made before the court, there is no any allegation that she was forcibly taken away by the accused from Meena Bazaar. Her evidence disclosed that the accused asked her to go out for roaming with him in a Maruti car and she came away with him. Now, in her statement U/S-164 Cr. P.C, victim (P.W.2) stated that she and the accused had love affair since two years before the incident and on the date of occurrence, accused called her to Kasumara Bridge and on reaching her, Jainuddin, the brother-in-law of the accused took her in a hired vehicle and upon meeting the accused, she went away with him to Barpeta in a bus and stayed for 2 days in his friend's house. Therefore upon giving the evidence of

the victim, it is crystal clear that she was not kidnapped by the accused. So, the offence U/S-366 (A) of IPC is not at all attracted in this case.

17. In order to understand the offence under Section 366-A IPC, the same is extracted herein below :

"366-A. Procuration of minor girl.- Whoever, by any means whatsoever induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, 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 extend to ten years, and shall also be liable to fine."

- 18. A perusal of the aforesaid section would indicate that there has to be an inducement of some kind to a minor under the age of 18 years to go from any place or to do any act with the intention that such girl may be knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. To bring home an offence under Section 366 A of IPC, it is imperative for the prosecution to prove that there was such an inducement.
- 19. The Supreme Court in Sannaia Subba and Anr. Vs. State of Andhra Pradesh, reported in **(2008) 17 SCC 225** stated as follows:
- "39. So far as Section 366-A is concerned, in such an offence what is required to be proved by the prosecution is that there is cogent and reliable evidence to prove and establish that a minor girl under the age of 18 years was induced to come from one place to the other with the intention that such girl may be forced to have illicit intercourse with another person. Therefore, in such an offence, the Chief ingredient is that the girl is made to go from one place to the other with the intention or knowledge that she may be forced to have illicit intercourse. The evidence on record does not reveal any such intention. That the prosecutrix was subjected and forced to have illicit intercourse came to be stated for the first time only during the trial, with

according to us is nothing but embellishment in order to see that the accused persons are made and are subjected to major punishments".

- 20. Materials on record does not disclose that there was any inducement made by the accused to the victim. There is also no evidence whatsoever that it was possible or it was likely that victim would be forced or seduced to illicit intercourse with any other person. The prosecution has not even alleged any such case, much less led evidence to that effect. In stark contrast, the evidence of PW.5 leads to the inevitable conclusion that she had voluntarily gone with the appellant, sans any inducement. So, the offence U/S-366 (A) of IPC is not at all attracted in this case.
- 21. Coming to the offences of rape and penetrative sexual assault on the victim, it is in her evidence that the accused married her before the Kazi and then, they both stayed together. But, no marriage certificate has been produced by the victim to prove the same. There is no allegation of rape or forceful sexual assault by the victim against the accused in her evidence before the court. So, the offence U/S-376 of IPC R/W Section 4 of POCSO Act, 2012 are not at all attracted against the accused person.
- 22. In the result, the prosecution has miserably failed to prove the case beyond all reasonable doubt against the accused person— Abdur Rofik @ Abdul Rofik. Accordingly, the accused is held not guilty. He is, hereby, acquitted of the offence U/S-366 (A)/376 of IPC R/W Section 4 of the POCSO Act, and set at liberty forthwith.
- 23. His bail bonds shall remain in force for next 6 (six) months U/S-437 (A) Cr. P.C.
- 24. The case is disposed of on contest.
- 25. The Judgment is pronounced in open Court and written on separate sheets.

Given under my hand and seal of this Court on this $27^{\text{th}}\,$ day of January, 2020.

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

Special Judge, Kamrup, Amingaon **APPENDIX**

Prosecution Witness:

P.W.1, Halem Ali

P.W.2, is the victim

P.W.3, Abu Shama Ahmed

P.W.4, Soleman Ali

P.W.5, Sofiqul Islam

P.W.6, Jahur Uddin

P.W.7, ASI Anjan Das

Prosecution Exhibit

Ext. 1 is the statement of the victim recorded U/S-164 Cr. P.C.

Ext. 2 is the sketch-map

Ext.3 is the seizure list

Ext. 4 is the charge-sheet

Special Judge, Kamrup, Amingaon