IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present :Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 38/2019 U/S 363/376 IPC R/W Section 6 of POCSO Act

State of Assam

-Vs-

Khairul Haque.....Accused.

For the Prosecution: Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. T.C. Boro, Learned Advocate.

Date of Evidence : 24-10-19: 30-11-19: 21-12-19.

Date of Argument : 21-12-2019.

Date of Judgment : 21-12-2019.

JUDGMENT

- 1. The prosecution case in brief is that on 27-12-16, at 03 am the accused took away sixteen years minor daughter of the informant from her home. Hence, the informant Fakaruddin Ali Ahmed lodged an FIR with the Incharge of Sapmari Outpost.
- 2. On the basis of the FIR, Udalguri P.S. Case No. 287/16, under Section 366-A IPC was registered. Later on Section 376 IPC R/W Section 6 of POCSO

Act was added to the case and after completion of investigation Police submitted charge-sheet under Section 363/376 IPC R/W Section 6 of POCSO Act against the accused Khairul Haque.

3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 363/376 IPC, R/W Section 6 of POCSO Act, Hon'ble Special Judge, Udalguri framed charge there under and the ingredients of charges under Section 363/376 IPC, R/W Section 6 of POCSO Act, were read over and explained to the accused to which he pleaded not guilty and claimed to be tried. The learned Special Judge vide Order dated 21-12-19, transferred the case to this court for disposal.

4. The prosecution in order to prove its case examined the following 04(four) witnesses:

PW1- Dr. Kankan Thakuria.

PW2- Victim-A.

PW3- Md. Fakaruddin Ali Ahmed.

PW4- ASI Kumud Ch. Sarma.

5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.

- 6. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused kidnapped victim-A, a minor girl under 16 years of age from her lawful guardianship of her parents?
 - (II) Whether the accused committed rape on victim-A?

(III) Whether the accused committed aggravated penetrative sexual assault upon Victim-A, aged about 16 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T.C. Boro.
- 8. Learned defence counsel has submitted that none of the prosecution witnesses have deposed implicating the alleged offence of kidnapping and committing rape upon the victim girl. According to the victim she voluntarily eloped with the accused. The victim is a major woman. Hence, prosecution has failed to prove the charges against the accused.
- 9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
- 10. PW1 is Dr. Kankan Thakuria. In his evidence PW1 had deposed that on 7.1.17, he was serving as M. & H.O.1 at Udalguri Civil Hospital. On that day, he examined the victim girl, escorted by WPC/126 Rupeswari Rabha. On examination, he found the following:-

Identification Mark:-

- (1) Mole right side of cheek.
- (2) Mole over left tragus of left ear.

Physical examination:

Height- 158 cm, weight- 44 Kg, teeth- 28 Nos., axillary hair- present, pubic hair- present, breast- developed, hymen- absent, vaginal injury- absent, clothing- Salowar.

Smear examination vide Regd. No.638 reported by pathologist Mangaldai Civil Hospital shows no spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray examination of the right wrist, elbow and iliac crest vide plate No.1141 dated 7.1.2017 reported by Radiologist Dr. A. Deka shows radiological age 18 to 19 years.

Urine for pregnancy test on 7.1.2017 reported by Rashmi Clinical Lab, Mangaldai shows positive .

Ultrasonography of abdomen on 7.1.2017 by Sinologist, Dr. A. Dela reported as normal echofeture of organ imaged .

PW1 had deposed that in his opinion:

- 1. Radiological age approximate 18-19 years.
- 2. No sign of physical violence.
- 3. No spermatozoa is seen.

Ext.1 is the report and Ext.1(1) is the signature of PW1.

Cross-examination, PW1 had been declined by the defence.

- 11. PW2 is victim-A, daughter of informant. In her evidence PW2 had deposed that the occurrence took place about 3 years ago. She eloped away with the accused as a result of love affairs with him to Lakhimpur and stayed there in the relative's house of the accused for 10 days. Thereafter, when her father came to know that she was staying with the accused at his relative's house at Lakhimur her father went there and brought her to her home and lodged an FIR in this regard. She was produced before the Magistrate to get her statement recorded U/S 164 Cr.P.C. by police. She was also sent for medical examination. Ext.2 is the statement U/S 164 Cr.P.C. Ext.2 (1) is the signature of PW2. In cross-examination, PW2 had stated that as her father did not accept her love affairs with the accused and, as such, he brought her to her own home. She stayed at the relative's house of the accused alongwith their family members. The accused did not compel her to go alongwith him to Lakhimpur. She voluntarily went with the accused to Lakhimpur.
- 12. PW3 is Fakaruddin Ali Ahmed, informant and father of the victim girl. In his evidence PW3 had deposed that he knew the accused who was his tractor

driver at the time of occurrence. The incident occurred in the month of December, 2016. In the morning, when he woke up from bed, he did not find his daughter at his house. They made search of her whereabouts but she remained traceless. After two days of the incident he lodged FIR before the police. Later, he came to know that his daughter was staying with the accused, who was his tractor driver, at Lakhimur. After collecting information of the location he went to Lakhimpur and brought his daughter. At that time his daughter was above 16 years old. He asked his daughter about the incident but she remained silent. Ext.3 is the FIR wherein Ext.3(1) is the signature of PW3. In cross-examination, PW3 had stated that he did not witness as to the taking of his daughter by the accused from his house.

13. PW4 is ASI Kumud Ch. Sarma, Investigating Officer of this case. In his evidence PW4 had deposed that on 29.12.2016 he was posted as I/C, Sapmari Police Out-Post under Udalguri PS. On that day one Fakaruddin Ali Ahmed lodged an FIR before the In-Charge of Sapmari Police Out-Post. On receipt of the same the In-charge sent the same for registration a case to the Udalguri P.S. and in the meantime PW4 took up the preliminary investigation of the case. The O/C, Udalguri PS on the basis of the FIR registered a case vide Udalguri PS case No. 287/2016 U/S 366A IPC and endorsed him for investigation of the case. During the course of investigation PW4 visited the place of occurrence, recorded the statement of the available witnesses U/S 161 Cr.P.C., prepared a sketch map thereof, arrested the accused and also recovered the victim. The accused was sent up to custody. The victim was sent for medical examination and also got her statement recorded U/S 164 Cr.P.C. before the Magistrate. On conclusion of the investigation having found a prima-facie case, PW4 laid the charge-sheet against the accused U/S 363/376 IPC R/W Sec. 6 of POCSO Act. Ext.4 is the sketch map. Ext.4(1) is the signature of PW4. Ext.5 is the seizure list. Ext.5(1) is the signature of PW4. Ext.6 is the charge-sheet. Ext.6(1) is the signature of PW4. Cross-examination of PW4 had been declined by the defence.

- 14. On appraisement of the evidence on record it appears that the victim girl, who has been examined as PW2, has deposed that she eloped away with the accused as a result of love affairs with him to Lakhimpur and stayed there in the relative's house of the accused for 10 days. PW2 has categorically revealed in her cross-examination that as her father did not accept her love affairs with the accused and, as such, he brought her to her own home and lodged an FIR in this regard. The accused did not compel her to go alongwith him to Lakhimpur. She voluntarily went with the accused to Lakhimpur. PW3, the father of the victim girl has deposed that he knew the accused who was his tractor driver at the time of occurrence. On the day of occurrence, when he woke up from bed, he did not find his daughter at his house. They made search of her whereabouts but she remained traceless. After two days of the incident he lodged FIR before the police. Later, he came to know that his daughter was staying with the accused, who was his tractor driver, at Lakhimur. He asked his daughter about the incident but she remained silent. PW3 has not implicated anything against the accused in his evidence. PW1, the Medical Officer has opined that the victim was approximately 18-19 years at the time of examination. Thus, medical evidence made it clear that the victim was a major woman at the time of incident. On cumulative assessment of the evidence nothing has been found against the accused as the victim herself went with the accused on her own volition. She was a major woman at the time of occurrence and as such attained the age to give a valid consent.
- 15. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 363/376 IPC R/W Section 6 of POCSO Act against the accused beyond all reasonable doubt.

16. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

- 17. In the result, the accused Khairul Haque is found not guilty under Section 363/376 IPC R/W Section 6 of POCSO Act and acquitted of charges under Sections 363/376 IPC R/W Section 6 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.
- 18. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of provision under Section 437-A Cr.P.C.
- 19. Judgment is signed, delivered and pronounced in the open court today the 21st day of December, 2019.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri.

(N.Talukdar)
Addl. Sessions Judge
Udalguri.

IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI. SPECIAL (POCSO) 38/2019

APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : Medical report.

Ext.-2 : Statement of the victim U/S 164 Cr.P.C.

Ext.-3: FIR.

Ext.-4 : Sketch map.

Ext.-5 : Seizure list.

Ext.-6 : Charge sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Dr. Kankan Thakuria.

PW2- Victim-A.

PW3- Md. Fakaruddin Ali Ahmed.

PW4- ASI Kumud Ch. Sarma.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)

Addl. Sessions Judge.

Udalguri.