IN THE COURT OF SPECIAL JUDGE: LAKHIMPUR: AT NORTH LAKHIMPUR.

PRESENT-M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL (POCSO) CASE NO.12/2017.

Under Sections-366/ 392/34 IPC and under Section 4 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

- 1. Md. Mintu Ali.
- 2. Md. Mukut Ali.
- 3. Md. Ainul Hague.
- 4. Md. Rofiqul Ahmed @ Kulamoni @ Deepak. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. M. Gogoi, Special Public Prosecutor. ... For the State of Assam. Mr. G. Ahmed, Advocate. ... For the all accused persons.

Date of framing of charge. : 29.08.2017.
Dates of taking evidence. : 01.11.2017, 29.05.2018, 03.12.2018

and 25.04.2019.

Date of hearing Argument. : 25.04.2019. Date of delivery of Judgment. : 25.04.2019.

<u>JUDGMENT</u>

1. The case of the prosecution side may, in brief, be described thus:

The informant, Md. Noor Islam on 08.07.2016 lodged an ejahar with Laluk Police Station to the effect that the victim X is his daughter. On 07.07.2016 at about 7 pm, while the victim X was going to the house of her maternal uncle situated in the same village

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from his house, at that time, the accused, Md. Mintu Ali, Md. Batu Ali, Md. Miraj Ali and Musstt. Mihimai Begum caught hold of his daughter victim X and took her into a Maruti van and thereby kidnapped her. In the ejahar, the informant stated that till date, he had not got any clue of his daughter victim X.

- 2. On receiving the ejahar, the Officer-in-charge of Laluk Police Station registered a case vide Laluk P.S. Case No.244/2016 under Sections 366(A)/34 IPC.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence, recorded the statements of the witnesses u/s 161 CrPC, and prepared the sketch map of the place of occurrence. The I.O. recovered the victim X and forwarded her at North Lakhimpur Civil Hospital for her medical examination, and accordingly, got her medically examined at North Lakhimpur Civil Hospital. Thereafter, the victim X was forwarded to the court for recording her statement u/s 164 CrPC, and accordingly the statement of the victim X was recorded u/s 164 CrPC in the court. The I.O. arrested the accused, Md. Rofigul Ahmed and Md. Ainul Haque and forwarded them to the judicial custody. The accused, Md. Mintu Ali had surrendered before court and accordingly, he was forwarded to the judicial custody. From the case record, it is found that the accused, Md. Mukut Ali had obtained Pre-arrest bail order from the Hon'ble Gauhati High Court. The I.O. after completion of investigation of the case on being found sufficient incriminating materials against the accused, Md. Mintu Ali, Md. Rofigul Ahmed, Md. Mukut Ali and Md. Ainul Hague under Sections 366(A)/ 376/ 392/ 34 IPC and under Section 4 of the POCSO Act, accordingly submitted the charge-sheet against the accused, Md. Mintu Ali, Md. Rofigul Ahmed, Md. Mukut Ali and Md. Ainul Hague under Sections 366(A)/ 376/ 392/ 34 IPC and under Section 4 of the POCSO Act.

- 4. The all accused persons namely, Md. Mintu Ali, Md. Rofiqul Ahmed, Md. Mukut Ali and Md. Ainul Haque made their appearance before the court and necessary copies were furnished to the all accused persons. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient materials against the all accused persons under Sections 366(A)/ 376/ 392/ 34 IPC and under Section 4 of the POCSO Act in the case record, the charges under Sections 366(A)/ 376/ 392/ 34 IPC and under Section 4 of the POCSO Act had been framed against the all accused persons. The charges were read over and explained to the all accused persons, to which they pleaded not guilty and claimed to be tried.
- 5. In course of trial, the prosecution side examined 6 (six) witnesses.
- 6. The statement of the accused, Md. Mintu Ali had been recorded u/s 313 CrPC, which is a total denial of commission of any offence. The recording of the statement of the other accused, Md. Rofiqul Ahmed, Md. Mukut Ali and Md. Ainul Haque is felt not necessary as because the prosecution witnesses examined have not implicated them in their evidence regarding commission of any offence.
- 7. The all accused persons led no evidence in their defence.
- 8. Heard Argument from the learned advocates of both sides.
- 9. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the all accused persons on 07.07.2016 at about 7 pm at Padmapur under Laluk Police Station, Dist. Lakhimpur, kidnapped the victim X, a minor girl above the age of 12

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years, with intent that she might be forced or seduced to illicit intercourse with them?

- (II) Whether the all accused persons after kidnapping the victim X, a minor girl above the age of 12 years committed penetrative sexual assault on the person of the victim X?
- (III) Whether the all accused persons committed robbery of Gold ear ring, Gold finger ring and Silver 'Payal' from the victim X?

11. **DECISION AND REASONS THEREOF**

The prosecution side examined 6 (six) witnesses.

PW.1 is Md. Basiratddin. PW.2 is Md, Noor Islam, who is the informant of the case as well as father of the victim X. PW.3 is the victim X. PW.4 is Md. Bogamal Hussain. PW.5 is Md. Ajibul Rahman. PW.6 is Md. Tahibul Hussain.

PW.1, Md. Basiratddin in his evidence stated that he knows the accused, Md. Mintu Ali. He also stated that the victim X is his grand-daughter. He in his evidence also stated that the occurrence had taken place on the day of 'Eid-ul-fitr' at about 7 pm. He in his evidence also stated that he heard that the victim X had been eloped with the accused, Md. Mintu Ali. Then, he went to the house of the victim X, but did not find the father of the victim X in the house. He in his evidence also stated that later on, the victim X had been taken back to her father's house, but subsequently the victim X again fled away with the accused, Md. Mintu Ali. From his evidence, it is found that he heard that the victim X had eloped with the accused, Md. Mintu Ali, but he did not state in his evidence from whom, he heard that the victim X had eloped with the accused, Md. Mintu Ali. So, the evidence adduced by him is a hearsay evidence. He in his evidence also stated

that the victim X after recovery, again fled away with the accused, Md. Mintu Ali. But, he did not state how he came to know that the victim X in the second time had fled away with the accused, Md. Mintu Ali. So, the evidence adduced by him is not reliable.

PW.2, Md. Noor Islam in his evidence stated that the victim X is his daughter. He also stated that the occurrence had taken place about one year back. He in his evidence also stated that on the date of occurrence, his daughter victim X had gone to the house of one of her friends in the village. As there was late in coming back of his daughter victim X into the house, he thought that the victim X had fled away with the accused, Md. Mintu Ali and then, he lodged the ejahar with the Police Station. He in his evidence also stated that thereafter, the victim X came back to his house. He also stated that he had lodged the ejahar with the Police Station on suspicion.

This is the evidence adduced by PW.2, Md. Noor Islam, the informant of the case as well as father of the victim X. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

PW.3 is the victim X. PW.3, the victim X in her evidence stated that the occurrence had taken place about 2 years back. On the date of occurrence in the evening, she had gone to the house of one of her friends situated in her village. She in her evidence also stated that there was delay in her returning back into her house from the house of her friend. As there was delay in her returning back into the house, her father lodged the ejahar with the Police Station. She in her evidence also stated that she had not fled away with the accused, Md. Mintu Ali. The accused, Md. Mintu Ali had not performed sexual act with her.

This is the evidence adduced by PW.3, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused persons for committing any offence.

PW.4, Md. Bogamal Hussain and PW.6, Md. Tahibul Hussain in their evidence did not implicate the accused persons regarding commission of any offence.

PW.5, Md. Ajibul Rahman in his evidence stated that the informant, Md. Noor Islam is his brother-in-law. He also stated that the victim X is the daughter of the informant, Md. Noor Islam, who is his niece from the side of his elder sister, Moni Begum. He in is evidence also stated that his house is situated about ½ km away from the house of the informant, Md. Noor Islam. He in his evidence also stated that the occurrence had taken place about 2 ½ years back. He also stated that on the date of occurrence in the evening, he came to his house and then, he came to know from his family members that the victim X had not been in the house. On the following morning, he went to the house of his brother-in-law, Md. Noor Islam. In the house of Noor Islam, he found the victim X and then, his elder sister, Moni Begum stated that the victim X on the previous day had gone to the house of her friend in the village and due to misunderstanding, a case has been filed against the accused person. Thereafter, he came back to his house. He in his evidence also stated that he did not know anything regarding the occurrence of this case.

This is the evidence adduced by PW.5, Md. Ajibul Rahman. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused persons for committing any offence.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has Contd...

Special (POCSO) Case No.12/2017.

7

totally failed to prove the charges under Sections 366/ 392/ 34 IPC and under Section 4 of the POCSO Act brought against the all accused persons, Md. Mintu Ali, Md. Rofiqul Ahmed, Md. Mukut Ali and Md. Ainul Haque, and the all accused persons deserve to be acquitted.

13. I, therefore, hold the all accused persons namely, Md. Mintu Ali, Md. Rofiqul Ahmed, Md. Mukut Ali and Md. Ainul Haque not guilty and acquit them from the charges under Sections 366/392/34 IPC and under Section 4 of the POCSO Act. The all accused persons are set at their liberty forthwith.

14. The bail bonds of the all accused persons are cancelled and their sureties are discharged.

 $\,$ 15. Given under my hand and seal of this court on this the 25th day of April, 2019.

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Md. Basiratddin.

PW.2 – Md. Noor Islam, the informant of the case as well as father of the victim X.

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PW.3 - Victim X.

PW.4 - Md. Bogamal Hussain.

PW.5 - Md. Ajibul Rahman.

PW.6 - Md. Tahibul Hussain.

- 2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>: Nil.
- 3. <u>DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE</u>: Nil.
- 4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>: Nil.

(M. A. Choudhury) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>