## IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.46/2019 (U/S: 363/376(3) IPC R/W Sec. 6 of POCSO Act)

State Versus Tulshi Harijan, S/O Sri Mukhlal Harijon, Vill- No.1 Merabil, PS-Mazbat, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

## APPERANCE:

For the Prosecution: Sri A. Basumatar, P.P., Udalguri

AND

For the accused: Mr. P. Lumga, Advocate. Evidence recorded on: 26.11.19, 9.12.2019.

Argument heard on: 9.12.2019. Judgment delivered on: 9.12.2019.

## JUDGMENT

- 1. The prosecution case, as portrayed in the FIR, in short, is that on 12.8.2019 the informant, Sri Lilawati longed an FIR with the Officer-In-Charge, of Udalguri PS, alleging amongst others that on 7.8.2019 Tulshi Harijon, who is a married man, came to their house for social visit. On the next day, i.e. on 9.8.2019 at about 8 AM taking the advantage of their absence eloped away her victim daughter (real name is withheld, henceforth referred as to the victim), aged about 15 years. It is further alleged that victim was sexually harassed by the accused. They searched her whereabouts and ultimately came to know that the police of Mazbat PS apprehended both the accused and the victim and took them to Udalguri PS.
- 2. Based on the FIR the O/C, Udalguri PS registered a case vide Udalguri Police Station case No.143/2019 U/S 366/376(3) IPC R/W Section 6 of POCSO Act and undertaken the investigation of the case. On completion of as usual

investigation of the case the accused Tulshi Harijon was charge-sheeted for the offences U/S 363 /376(3) IPC R/W Section 6 of POCSO Act to face trial.

- 3. On receipt of the charge sheet Special (POCSO) case No. 46/2019 was registered. Thereupon, process was issued for appearance of the accused. The accused entered his appearance and supplied with the copies of the police documents U/S 173 Cr.P.C.
- 4. Whereupon, after scrutiny of the relevant papers including the case diary and having heard learned counsel of both sides a prima-facie case was made out to presume that the accused had committed the offence U/S 363/376(3) IPC R/W Sec. 6 of POCSO Act and, therefore, formal charges thereunder were framed against the accused and the same on being read over and explained to him, to which he pleaded not guilty and claimed to stand trial.
- 5. Situated thus, the points for determination in the present case are set up and framed as:-
- (1) Whether the accused on 9.8.2019 at about 8 AM at Simal basti under Udalguri PS kidnapped the victim form her lawful guardianship and thereby committed an offence punishable under Section 363 IPC, and within my cognizance?
- (2) Whether the accused on the same day committed rape upon the victim, a girl under 16 years of age, and thereby committed an offence punishable under Section 376(3) IPC, and within my cognizance?
- (3) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 15 years, and thereby committed an offence punishable under Section 6 of POCSO Act, and within my cognizance
- 6. To establish its case the prosecution has examined as many as four witnesses including the informant, victim and M.O. of the case.

- 7. It may be noted at this stage that after examination of the said materials witnesses learned P.P. for the State submitted a petition whereby he has urged before this court to close the prosecution evidence without examining the remaining prosecution witnesses in view of the fact that material witnesses including the informant, victim, father of the victim and the M.O. adduced no iota of incriminating evidence in support of the charge levelled against the accused. That being so, the examination of the remaining prosecution witnesses would not improve the prosecution case.
- 8. On the backdrop of the petition, on a close and minute perusal of the materials on record including the evidence on record, I found that there was no shred of incriminating evidence in the testimony of the vital witnesses including the victim, and therefore, examination of the remaining witnesses became redundant having no scope to improve the prosecution case, and, as such, the petition was allowed and prosecution evidence stood closed. The examination of the accused U/S 313 Cr.P.C. was dispensed with as no incriminating circumstances appeared in the evidence to put before him for seeking his explanation.
- 9. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

## **DISCUSSION, DECISION AND REASONS THEREFOR:**

10. PW1, Dr. Sibaji Gupta is the Medical and Health Officer, who examined the victim medically. He has testified that on 13.8.2019 he was serving as M. & H.O. at Udalguri Civil Hospital. On that day, he examined the victim on police requisition in reference to Udalguri P.S. case No.143/2019 U/S 366/376B IPC R/W Sec. 6 of POCSO Act and found the following:-

Identification Mark: - Cur mark over forehead.

Physical examination:-

Height- 161 cm, weight- 50 Kg, teeth- 28 Nos., axillary hair- present, breast-developed, hymen- absent, pubic hair- present, vaginal injury- not seen, marks of violence- not found, LMP- not remembered.

Smear examination:- No spermatozoa seen.

## RADIOLOGICAL EXAMINATION:-

X-ray examination of the right wrist, elbow and iliac crest reported by Radiologist Radhika X-Ray, Mangaldai shows radiological age 18 to 19 years. Urine for pregnancy test not provided.

Ultrasonography of abdomen on 14.8.2019 by Sinologist, Dr. H. Engtipi reported as normal study.

The doctor opined that-

- 1. Radiological age is approximately 18-19 years.
- 2. No spermatozoa seen.
- 3. USG whole abdomen reveals normal study.
- 4. No sign of sexual violence noticed.

Ext.1 is his report. Ext.1(1) is his signature.

- 11. The evidence of the victim (PW2) is that about 5 (five) months back one day accused came to thier home as a guest to dine with them in the evening at about 7 PM. At that time her parents were present alongwith other family members. The accused stayed at their home in the night. On the next day the accused took her to his home. She voluntarily went alongwith the accused without informing her parents. When her parents came to know that she went alongwith the accused to his home so on the next day her parents brought her back. When she stayed alongwith the accused she was not sexually assaulted by the accused or accused tried to sexually harassed me. When her parents did not find her at home an FIR was lodged before the police by her mother. Out of misunderstanding her mother lodged an FIR against the accused. Police in connection with this case sent her for medical examination and also got her statement recorded before the Magistrate U/S 164 Cr.P.C. where she put her thumb impression. Her cross-examination is declined by the defence.
- 12. PW3, Smti. Lilawati Harijon is the first informant of the case as well as mother of the victim. She has disclosed in her deposition that about 5 (five) months back one day the accused came to their home as a guest to have dine with them at around 7 PM. After having dinner the accused stayed at their

home. On the next day the accused went alongwith her victim daughter which they came to know later on. So, an FIR was lodged by her in this regard and police recovered her daughter. On being asked her daughter told that she voluntarily went alongwith the accused and stayed there. As per the version of her daughter during her stay at the house of the accused she was neither sexually assaulted by the accused nor tried to commit sexual intercourse with her. Out of misunderstanding she lodged the FIR where she put her thumb impression.

- 13. Likewise, the evidence of PW4, Premlal Harijon also harmonious with the evidence of PW3, who is his wife without disclosing an iota of implicating evidence to support the broad spectrum of the prosecution case.
- 14. On consideration of the foregoing discussions of evidence on record, it is patent that there is no incriminating evidence adduced by any of the witnesses including the victim to substantiate the charge levelled against the accused. The most important witness of the case that is the victim (PW2) has adduced completely irreconcilable evidence which does not fit at all to the substratum of the prosecution case as depicted in the FIR. She has asserted in point blank in her examination in-chief itself that she voluntarily went with the accused and the accused did not sexually harass her at the time of occurrence. That aside, the evidence of M.O. (PW1) and the medical report, Ext.1 demonstrates that at the time of occurrence the victim was 18-19 years old. The victim (PW2) also explicitly reveals her age above 18 years when the incident had occurred.
- 15. That aside, the evidence of the first informant (PW3), the mother of the victim and PW4, the father of the victim are also found to be self effacing and contrary to the prosecution case as she has also completely turned around from the material particulars of the case. PW3 has revealed that due to misunderstanding she lodged the FIR against the accused and no incident as disclosed in the FIR actually happened.
- 16. As a result of short fall of legally admissible evidence on record, the prosecution charges levelled against the accused has remained to be proved.

Hence, I have no alternative but to discard the evidence from consideration in toto. Therefore, the prosecution evidence is brushed aside disbelieving the prosecution case.

17. In the result, I hold the accused Tulshi Harijon is not guilty U/S 366/376(3) IPC R/W Section 6 of POCSO Act and, therefore, he is acquitted there under and set him at liberty forthwith.

Given under my hand and seal of this Court this 9<sup>th</sup> day of December,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Sessions Judge Udalguri.

Sessions Judge, Udalguri.

# APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Sibaji Guptaii)PW2 Miss sujanti Harijoniii)PW3 Smti. Lilawati Harijoniv)PW4 Premlal Harijon

B)Defence witness: Nil.

C)Exhibits:

i) Ext.1 Medical report.

Dictated and corrected by me.

Sessions Judge, Udalguri