IN THE COURT OF SPECIAL JUDGE::::::BONGAIGAON.

Special (P) Case No. 13 (BGN)/2018

U/S 366-A IPC R/W Section 6 of POCSO Act. (Arising out of Bongaigaon P.S. Case No. 658/2017)

State

Vs.

Mirajul Ali.....Accused

Present:- Smti. I. Barman, Special Judge (under POCSO Act), <u>Bongaigaon.</u>

Appearance :-

For the State

: Smt. R. Choudhury, Special Public

Prosecutor.

For the accused : Sri M. Rahman, Advocate.

Date of argument:

08.10.2018.

Date of judgment:

11.10.2018.

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JUDGMENT AND ORDER

1. Prosecution case in brief is that on 3/9/2017 accused Mirajul Ali enticing the informant's minor sister/victim to marry, had taken her to Sibsagar wherein they resided in one room and did have sexual intercourse. It is further alleged that at the time of going with the accused, the victim took some ornaments and Rs. 15000/- (Rupees Fifteen Thousand) with her as insisted by the accused.

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- 2. On receipt of the FIR from the informant (PW1) on 8.9.17 the O/C Bongaigaon Police Station registered a case being Bongaigaon Police Station Case No. 658/17 under Section 363 IPC and entrusted ASI Siba Prasad Kalita to investigate the case. Accordingly, the Investigating Office visited the place of occurrence, recorded the statement of the witnesses including the victim girl, sent her for medical examination, got recorded her statement under Section 164 Cr.P.C and on completion of investigation laid charge sheet against the accused Mirajul Ali U/S 366-A read with Section 6 of POCSO Act showing him as absconder.
 - 3. On perusing police report and hearing both sides, having found a prima-facie case, charge U/S 366-A IPC read with Section 6 of POCSO Act was framed against the accused. The accused pleaded innocence when charge was read over and explained to him and claimed for trial.

Points for determination

- 1) Whether on 3/9/17 at village 1 no. Garogaon under Bongaigaon P.S. induced Anna Khatun under the age of 18 years to go with the accused Mirajul Ali with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse and thereby committed an offence punishable U/S 366-A IPC?
- 2) Whether on 4/9/17 and thereafter at Sibsagar, the accused committed penetrative sexual assault on the minor victim Anna Khatun more than once and thereby committed an offence punishable under Section 6 of POCSO?

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- 4. In this case, to bring home the charge against the accused, prosecution has examined as many as 4 witnesses. Defence side examined none.
- 5. Statement of the accused was recorded U/S 313 Cr.P.C in which, he denied all the allegations levelled against him and pleaded innocence.
- 6. I have heard argument advanced by the learned counsel of both sides.

Discussion, Decision and Reasons therefor

- 7. At the very out set I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused.
- 8. PW 1 the informant as well as the elder brother of the victim deposed that on 3/9/17 his victim sister, aged about 17 years was missing from home in the evening time and after two days came to know that accused Mirajul Ali had taken her to Sibsagar and kept her there in a rented room for two days. After 3/4 days he had taken her to his residence but his father refused to marry the victim with the accused. Hence, he filed the FIR Ext1. After filing the FIR police recovered the victim from the house of the accused. He proved the birth certificate as M. Ext 1 seized by police vide seizure list Ext 2.

During cross he admitted that the accused had love affair with the victim and the victim would know well if she on her own accord went with the accused. As per his evidence the victim attains the age of 19 years when he deposed in Court. He also admitted that the birth certificate of the victim was obtained after about 8/9 years of her birth for NRC purpose showing her age less than her actual age. He also admitted that as, at first the father of the accused refused to marry the victim with the accused, hence the case was filed.

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9. PW 2 Jiyarul Miya heard that out of love the accused had taken the victim and kept her somewhere for about two days and thereafter brought her back to his house but as his family members refused to marry the victim, hence, case was filed.

During cross he admitted that later, on 25/6/18 the accused married the victim and still resided with her as husband and wife.

- 10. PW 3 the victim is the core witness of the case. She testified that she had love with the accused since 2/2½ years and out of love she voluntarily went with the accused to Sibsagar wherein they resided as husband and wife in a rented house. From Sibsagar they came to the house of the accused but as he did not marry her, hence her elder brother filed the FIR. Later on, the accused married her and still she is leading conjugal life with him. She admitted that at the time of incident she was 18 years old.
 - 11. PW 4 ASI Siba Prasad Kalita, the Investigating Officer deposed that on being entrusted him to investigate the case, he visited the place of occurrence, prepared the sketch map of the place of occurrence vide Ext 3, recorded the statement of the witnesses, seized the birth certificate of the victim vide seizure list Ext 2, got recorded her statement under Section 164 Cr.P.C, sent the victim for medical examination and not finding the accused showing him as absconder submitted charge-sheet under Section 366-A IPC read with Section 6 of POCSO Act vide Ext 4.

During cross he stated that the incident took place on 3/9/17 and the FIR was lodged on 8/9/17. He admitted that as per seized birth certificate, the victim was born on 23.7.02 but the same obtained after seven years on 26.4.09.

12. In this case the victim in her deposition clearly stated that at the time of incident she was 18 years old. Though, the informant the elder Contd...

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brother of the victim in his examination-in-chief claimed the age of the victim as 17 years but during cross he stated that at the time of his deposition recorded on 15/6/18, she was 19 years old. The alleged incident took place on 3/9/17. So on that count also, she was 18 years or above.

- The medical report available in the record also shows that 13. as per X-ray, she was above 17 years and below 20 years. So the evidence of PW1 and PW2 the most material witnesses i.e. the informant and the victim coupled with medical report clearly shows that she was a major at the time of incident. As such offence under POCSO Act does not attract in this case.
- Regarding the alleged offence of abduction and sexual 14. intercourse, the victim herself admitted that out of love she went with the accused, resided with him at Sibsagar and then returned to his house. The evidence of PW1 and PW2 also clearly shows that perhaps after returning home, the father of the accused did not agree to marry the victim with his accused son for which the FIR was lodged. But admittedly later on the accused married the victim and still they are leading conjugal life. Though, the informant in the FIR alleged that the accused enticing the victim had taken her away and also asked her to take ornaments and money with her, but this is neither stated by the informant himself nor the victim in their deposition. There was no inducement or threat on the part of the accused. No force was used in taking her away. Being a full grown girl she voluntarily went with the accused. As such the ingredients of offence U/S 366-A or 366 IPC is missing in the case. There is also no iota of evidence that accused had any intention not to marry the victim. If the family members of the accused did not agree to accept the victim, for which he could not marry the victim immediately, it cannot be said that the accused had any intention to cheat the victim. The evidence of PWs reveal that being a major one the victim went to the company of the accused voluntarily and she submitted herself to the accused without any hesitation or resistance.

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15. In the evidence discussed above shows that the victim went with the accused on her own accord and did have sexual intercourse with him voluntarily, if any. This is a clear case of promiscuity not abduction or rape. On close appreciation of the evidence of PWs, I hold and decide that the prosecution could not establish the charge U/S 366-A IPC and Section 6 of POCSO Act against the accused. He is acquitted accordingly and set him at liberty forthwith. His bail bond shall remain in force till next six months.

16. Given under my hand and the seal of this Court on th 11th day of October, 2018, at Bongaigaon.

(I. Barman Indgo, Special Judgeon, Bongaigaon

Dictated and corrected by me

(I. Barman) Special Judge; Bolingard

APPENDIX

Prosecution witness:

PW 1 - Elder brother of the victim.

PW 2 - Jiyarul Ali.

PW 3 - The victim.

PW 4 - ASI Siba Prasad Kalita.

Defence witness

Nil.

Document Exhibited by Prosecution:

Ext 1 - Ejahar.

Ext 1(1)- Signature of the informant.

Ext 2 - Seizure list.

Ext 2(1) - Signature of the informant.

Ext 2(2) - Signature of ASI Siba Prasad Kalita.

Ext 3 - Sketch map

Ext 3(1) - Signature of ASI Siba Prasad Kalita.

Ext 4 - Charge-sheet.

Ext 4(1) - Signature of ASI Siba Prasad Kalita.

Material Exhibited by Prosecution:

M. Ext - 1 Birth certificate.

Defence Exhibit:

Nil.

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