IN THE COURT OF THE SPECIAL JUDGE

CHIRANG, KAJALGAON.



Special(P) Case No. 7(Basu)/2017

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U/S 344/376(2)(i) IPC R/W Section 4 of POCSO Act.

> PRESENT : Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State : Sri D. Das, Ld. Public Prosecutor

For the accused : Sri N.I. Siddique, Ld. Advocate

Date of evidence : 24.08.17, 20.09.17, 08.11.17,

19.01.18, 23.05.18

Date of Argument : 15.06.2018

Date of Judgment : 15.06.2018

JUDGMENT AND ORDER

- 1. The prosecution case in brief is that on 17.05.2017, the informant Pritom Mandal lodged an FIR before Basugaon P.S. alleging that since one month before as on 17.05.2017, the accused had been keeping the victim 'X' (name is withheld), a 15 years old girl of Bongaigaon B.G. Colony in his house introducing her as his niece. It is alleged that on asking the victim the informant and other local people came to know that the accused had been committing sexual intercourse upon her regularly during her stay in the house of the accused.
- 2. After receiving the FIR, the O/C of Basugaon P.S. registered a case being Basugaon P.S. Case No. 34/17 U/S 344 IPC R/W Section 6/7 of POCSO Act and entrusted S.I. N. Boro to investigate the case. Accordingly, the

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Investigating Officer arrested the accused, visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC, collected the medical report and after completion of investigation, submitted charge-sheet against the accused Babul Debnath U/S 344 IPC R/W Section 6/8 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused person was produced from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, my learned predecessor framed charge U/S 344/376(2)(i) IPC read with Section 4 of POCSO Act against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail after framing charge.

- In support of the case prosecution side examined as many as 9 (nine) witnesses.
- Following witnesses are examined:-
 - (1) Sri Pritom Mandal as PW 1
 - (2) Victim as PW 2
 - (3) Sri Gautom Debnath as PW 3
 - (4) Md. Jahidul Ali as PW 4
 - (5) Sri Bishnu Barman as PW 5
 - (6) Sri Ajit Ghosh as PW 6
 - (7) Smt. Anita Ghosh as PW 7
 - (8) Sri Chandan Barman as PW 8
 - (9) S.I. Nobin Boro as PW 9
- 5. FIR was exhibited as Ext. 1. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext. 2. Sketch map was exhibited as Ext.3, charge-sheet was exhibited as Ext.4 and seizure list was exhibited as Ext.5.
- 6. Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.



8. Now points for consideration:

For the offence U/S 344 of IPC

1. Whether since one month before as on 17.05.2017 at Bhutiapara under Basugaon P.S., the accused wrongly confined the victim for one month?

For the offence U/S 376(2)(i) of IPC

2. Whether since one month at the same time and place, the accused committed rape upon the victim, a woman under age of 16 years?

For the offence U/S 4 of POCSO Act

3. Whether since one month at the same time and place, the accused committed penetrative sexual assault upon the victim (A minor girl under the age of 18 years)?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned all points simultaneously for the sake of convenience.
- 10. It was alleged in the FIR that accused kept the victim, who is his niece in his home as domestic helper. She was kept in his house by the accused under lock and key and he left the home for his work. On suspicion, local people, particularly some ladies interrogated the victim. Then they knew that accused forcefully committed sexual relationship with her during her stay in his home.
- 11. PW 1 is the informant. He is a village teacher and he heard about the incident from the village ladies. The women of the village interrogated the victim. Then it was revealed that accused committed sexual intercourse with her. According to decision of the villagers, PW 1 lodged the

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FIR. During cross-examination, he stated that he had not asked the victim directly about the incident. It is revealed from his evidence that accused is the paternal uncle of the victim. It is also revealed from his evidence that she stayed in the house of accused as domestic helper as because there was no any reliable shelter for her because her father remarried and her mother died. She took shelter in different places like maternal uncle's place, aunt's house and the house of the accused.

12. The important witness is the victim. She deposed that she used to work as domestic helper in the house of the accused, who is her paternal uncle. She admitted the fact that her mother died and after the death of her mother, her father remarried. As her father remarried another woman for which she left that house and took shelter in the house of her relatives. Accordingly, she took shelter in the house of her maternal uncle, one aunty and in the house of accused because accused is her own paternal uncle. It is also revealed from the evidence of PW 1 and PW 2 that accused resided alone. His parents died. His sisters were already married. As there is no any person to look after the household works, he kept the victim as domestic helpers. It is revealed from the evidence of PW 1 that the nearby women noticed that when accused left his home, he kept the victim within the house under lock and key. He left his home at about early 6 a.m. and returned 5 to 6 p.m. The victim stayed under lock and key for whole day. Therefore, villagers suspected that there was something happened between the accused and victim. When they asked the victim, victim reported that accused committed sexual intercourse with her forcefully. During her evidence, victim denied the allegation. According to her, she stayed in the house of the accused as domestic helper. Her paternal uncle, the accused did not commit any sexual act with her. At first, she stated the story before police as well as Magistrate according to ill advice of the villagers. PW 2 clearly stated that the village women gave pressure to state such a way that accused would be liable for criminal offence. As she was advised by villagers for which she stated before police and Magistrate that accused committed sexual intercourse with her. From her evidence as well as evidence of PW 1, it is found that victim was minor aged about 14 to 15 years.

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13. PW 3, PW 4, PW 5, PW 6, PW 7 and PW 8 are the villagers. They heard when the victim was interrogated by the village women. PW 3 deposed that he came to know from the neighboring people that accused kept the victim as domestic helper. At that time, age of the victim was about 15 years. On being suspicion, the neighboring people observed secretly inside the house of the accused and found that accused involved with immoral acts with the victim. On the following day, village people along with member of Mahila Committee interrogated the victim girl and then she disclosed before the villagers that she wanted to go home but accused detained her in his house and did physical relation with her forcefully. PW 3 was present at that time. After that accused along with victim was handed over to police and PW 1 lodged FIR. During cross-examination, this witness stated that who at first informed the matter to the villagers, this witness had no direct knowledge about the relationship between the accused and the victim. He did not see any incident between the accused and victim. From the evidence of PW 3, it is found that he had no direct knowledge about the incident. On suspicion, villagers interrogated the victim. According to the victim, she stated before police falsely as she was tutored by villagers.

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- 14. PW 4 deposed that victim was staying in the house of the accused and her age was about 15 years. He also stated same facts as stated by PW 3. He knew the fact from the villagers. According to him, before the date of occurrence, he did not know what was the relationship between the accused and victim. When victim was taken out from the house of the accused by the village women, this witness was absent. Therefore, PW 4 had no direct knowledge.
- 15. PW 5 also stated same thing. He got information subsequently. Already village people gathered there. After that he went to the place of occurrence.
- 16. PW 6 knew the incident when local people produced both the accused and victim before Basugaon P.S. He deposed that entire fact was heard by him from the victim. During cross-examination, he stated that at the

time of incident he was absent. He was in market. He heard about the incident from villagers. So, this witness is nothing but hearsay witness.

- 17. PW 7 deposed that the victim was staying along with the accused for a period of 1 $\frac{1}{2}$ months. On 17.05.2017 at about 8.15 a.m. villagers went to the house of the accused and searched him while victim was residing along with him. On inquiry, the victim told them that accused had committed sexual intercourse. During cross-examination, this witness stated that victim did not state anything to him about any incident. So, this witness also heard about the incident from the villagers. PW 8 also heard about the incident.
- 18. PW 9 is the Investigating Officer, who investigated the matter by visiting the place of occurrence and recording the statements of witnesses. He exhibited the sketch map, charge-sheet and seizure list. According to PW 9, victim was sent for medical examination within 24 hours from the alleged incident. According to opinion of the Medical Officer, after considering the clinical and radiological examination, age of the victim was found above 17 years and below 21 years. In the report, medical officer opined that no violent mark seen on her body or private parts.
- 19. After going through the entire evidence on record, it is found that age of the victim was not ascertained correctly. According to medical report as stated by the I.O., age of the victim was above 17 years and below 21 years. Other witnesses stated the age of the victim as 14/15 years on assumption. Victim denied all the allegations leveled against the accused. According to victim, due to pressure from the villagers, she stated that accused committed sexual intercourse with her forcefully. In her later deposition, victim clearly stated that accused committed no sexual intercourse. No any sexual act was committed by the accused as stated by victim but on suspicion, the villagers gave pressure to the victim to state falsely before the police as well as Magistrate that accused had committed sexual intercourse with her. It is established from the entire evidence on record that accused is the own paternal uncle of the victim. So, I have found that material witness did not support the prosecution story. According to her, earlier statement was

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given on the pressure from villagers. On the other hand, according to I.O. he collected the medical report and it was found after clinical and radiological examination that age of the victim was above 17 years and below 21 years. So, victim might be major at the time of occurrence. She stated nothing against the accused. Other witnesses, on suspicion, charged the accused regarding the stay of victim with him in a house. So, no cogent evidence is found to book the accused for the offences mentioned above. The prosecution failed to establish the case U/S 344/376(2)(i) IPC R/W Section 4 of POCSO Act against the accused. All points are remained as not proved. Accused is not found guilty.

ORDER

- 20. Prosecution failed to prove the case U/S 344/376(2)(i) IPC R/W Section 4 of POCSO Act against accused Babul Debnath. Accused is acquitted and set at liberty. He is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, he is allowed to remain on previous bail.
- 21. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.
- 22. Seized articles, if any, shall be disposed of according to law.
- 23. Given under my sign and seal of this Court on this the 15th day of June, 2018, at Kajalgaon, Chirang.

Dibyajyoh Mahanda (5/6)

Dictated and corrected by me,

(D.J. Mahanta)

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APPENDIX

Prosecution witness:

PW 1 - Sri Pritom Mandal

PW 2 – Victim

PW 3 - Sri Gautom Debnath

PW 4 - Md. Jahidul Ali

PW 5 - Sri Bishnu Barman

PW 6 - Sri Ajit Ghosh

PW 7 - Smt. Anita Ghosh

PW 8 - Sri Chandan Barman

PW 9 - S.I. Nobin Boro

Exhibit (Prosecution):

Ext-1 FIR

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

Ext-3 Sketch map

Ext-4 Charge-sheet

Ext-5 Seizure list

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta)
Special Judge
Chirany Agaigant