IN THE COURT OF THE SPECIAL JUDGE :::::::

CHIRANG, KAJALGAON.



Special(P) Case No. 15(D)/2016 U/S 366 IPC R/W Section 4 of POCSO Act.

State of Assam

Vs.

Shaharuk Hussain @ Saruk Ali Accused

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

ADVOCATES APPEARED:

For the State

: Sri D. Das, Public Prosecutor

For the accused

: Sri S. Alam, Advocate

Date of evidence

: 27.04.2018

Date of Argument

: 16.05.2018

Date of Judgment

: 16.05.2018

JUDGMENT AND ORDER



- 1. The prosecution case in brief is that on 23.03.2016 the informant Jahidul Islam lodged an FIR before Dhaligaon P.S. alleging that on 22.03.2016 at about 7.30 PM, his 16 years old daughter was missing from the house. On searching, the informant came to know that the accused Saruk Ali had taken with her daughter and kept her hidden in an unknown place.
- 2. After receiving the FIR, the O/C of Dhaligaon P.S. registered a case being Dhaligaon P.S. Case No. 53/16 U/S 366(A) IPC and entrusted A.S.I. Abdus Swahed to investigate the case. Accordingly, the 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 Shaharuk Hussain

- @ Saruk Ali U/S 366 IPC R/W Section 4 of POCSO Act. Later on, accused person was released on bail. After receiving charge sheet, copies of relevant documents were furnished to the accused person. 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 366 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.
- 3. In support of the case prosecution side examined as many as 3 (three) witnesses.
- Following witnesses are examined:-
 - (1) Md. Jahidul Islam as PW 1
 - (2) Musstt. Julima Khatun as PW 2
 - (3) Victim as PW 3
- 5. FIR was exhibited as Ext. 1. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext. 2.
- Defence plea is of total denial. Defence adduced no evidence.
- 7. Heard argument from both sides.

8. Now points for consideration:-

For the offence U/S 366 of IPC

1. Whether on 22.03.2016 at 7.30 PM at Village Bortaloa under Dhaligaon P.S., the accused kidnapped the victim, the daughter of the informant, a woman with intent (or knowing it to be likely) that she might be compelled to marry him against her will or in order (or knowing it to be likely) that she might be forced (or seduced) to illicit intercourse with him?

For the offence U/S 4 of POCSO Act

Special Judge, Chirang, Kajalgaon 2. Whether on the said date and place, the accused committed penetrative sexual assault on the victim ?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned points.
- PW 1 is the informant of this case and he is the father of the 10. victim. He deposed that at the time of occurrence, his daughter was reading in Class X and her age was about 18/19 years. She failed 3/4 times in lower classes. Occurrence took place on 22.03.16 and on that day his daughter was missing from his house. At that time, he was in his shop. After getting the information of missing, he searched different places but failed to recover her. On next day, he lodged FIR before Dhaligaon P.S. After one year, he got information from police that his daughter was recovered. He met his daughter in the Court premise when she was taken for recording her statement. Then he knew that his daughter eloped with the accused. He had no knowledge if there was any love affection between the accused and the victim. Since the date of occurrence, the accused and the victim are living as husband and wife. He proved the FIR as Ext.1 and his signature as Ext.1(1). During his crossexamination, he stated that the victim was admitted to lower primary school by his younger brother and his brother did not know the date of birth of his daughter. He further stated that he collected the birth certificate after 12 years from her birth and he gave her date of birth on assumption. He has no any allegation against accused, as both of them are living together as husband and wife peacefully.
- 11. PW 2 is the wife of the informant and mother of the victim. She deposed that occurrence took place about 2 years ago and at the time of occurrence, the age of the victim was about 18/19 years. On that day her daughter went to outside but did not return. She informed the matter to her husband through phone. They searched in different places but failed to recover her daughter. She was missing for a period of 4/5 months. Police recovered the girl. Later on, she knew that both of them were missing

Special Judge, Chirang, Kajalgaon according to their own will. If there was love affection between them, she had no knowledge. After that they are living together as husband and wife after performing marriage. She has no any allegation against the accused.

12. The victim who is the important witness in this case was examined as PW 3. She deposed that occurrence took place about 2 years ago. At that time, she appeared in Matric examination. She failed in Class-V and Class-IX. She had love affairs with the accused. She voluntarily went with the accused to Abhayapuri. Her family members did not know. She stayed at Abhayapuri for 3/4 months. Thereafter, they got married at Abhayapuri Court. Since then they are living together as husband and wife. Thereafter, they lived together at Lengtisinga for two months as husband and wife. She came to the Police Station alone. On being informed, her father also came. She met her father after 5/6 months. Her father did not know. Police sent her for medical examination and got her statement recorded by a Magistrate. She stated the same thing before the Magistrate as stated by her before this Court. She proved her statement U/S 164 CrPC as Ext.2 and her signature as Ext.2(1). At that time, she told her age as 18 years. At present, they are leading conjugal life and a son is also born from their wedlock. His age is about 1 1/2 years. During her cross-examination, she admitted that she told her age as 18 years before the Magistrate.

Special Judge. Chirang, Kalalgaon After going through the entire evidence given by three material witnesses, I have found that at the time of occurrence age of the victim was about 18/19 years. Victim clearly stated that her age was 18 years but no any document was submitted in this respect. According to PW 3, she eloped with the accused willfully. She stayed at Abhayapuri for 3/4 months. Thereafter, they got married at Abhayapuri Court. Since then they are living together as husband and wife. Thereafter, they lived together at Lengtisinga for two months as husband and wife and a son is also born. It is also found from the evidence of PW 1 and 2 i.e. the parents of the victim that at the time of occurrence, the age of the victim was about 18/19 years and both the victim and the accused are living together as husband and wife. They have no allegation against the accused. So, no case is established U/S 4 of POCSO Act.

14. Another charge was framed U/S 366 IPC. From the evidence of victim, I have found that she fled away with the accused willfully. From the evidence of victim, it is revealed that she had love affairs with accused and hence, she eloped with the accused and went to Abhayapuri without informing her family members. So, taking of victim by the accused is not proved beyond all reasonable doubt. Prosecution failed to establish the charge either U/S 366 IPC or U/S 4 of POCSO Act. Both the points mentioned above are remained as not proved.

ORDER

- 15. Prosecution failed to prove the case U/S 366 IPC R/W Section 4 of POCSO Act against accused Shaharuk Hussain @ Saruk Ali. 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.
- 16. A copy of this Judgment shall be given to the District Magistrate, Chirang for information.
- 17. Given under my sign and seal of this Court on this the 16th day of May, 2018, at Kajalgaon, Chirang.

Dibyey yoh Mahawa (6 (5 (19 (D.J. Mahanta) Special Judge, Special Judge, Chirang, Kalalgao

Dictated and corrected by me,

(D.J. Mahanta) Special Judge, Special and go. Chirang, Kajalgaca

APPENDIX

Prosecution witness:

PW 1 - Md. Jahidul Islam

PW 2 - Musstt. Julima Khatun

PW 3 – Victim

Exhibit (Prosecution):

Ext-1 FIR

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

Material Exhibit (Prosecution):

Nil.

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta)
Special Judge,
Special Judge,
Chirang, Kajalgao