## IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

### **Special (POCSO) 17/2018**

## State of Assam -Vs-

Tadek Nisso.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.
For the Accused: Mr. Dwijen Kr. Boro, Learned Advocate.

Date of Evidence : 08-01-19: 04-02-19.

Date of Argument : 12-03-19. Date of Judgment : 14-03-19.

#### **JUDGMENT**

1. The prosecution case in brief is that on 22-05-17, informant Munsi Murmu lodged an FIR with the Officer-in-Charge of Udalguri P.S. alleging that in the year 2013, accused Tadek Nisso took informant's nine years old daughter to Bhalukpung, Arunachal Pradesh to work as domestic help in his house with a promise to impart her education. Though in the year 2013, the daughter of the informant contacted with her parents, but from the year 2014, she had stopped communicating with her parents. Finally, on 08-03-17, the informant and his wife went to Bhalukpung and brought their daughter back home. After taking her back she had undergone blood test for her weakness and then it had come to light that she was pregnant

for five months. She informed her parents that she had been raped by the accused daily during her stay in the house of the accused.

- 2. On the basis of the FIR, Udalguri PS Case No. 102/17, under Section 370(4) IPC R/W Section 6 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 370(4) IPC R/W 6 of POCSO Act against the accused person Tadek Nisso.
- 3. The learned Sessions Judge vide Order dated 18-07-2018, transferred the case to this court for disposal.
- 4. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 370(4) IPC R/W Section 6 of POCSO Act, charges were framed there under and the ingredients of charges under Section 370(4) IPC R/W Section 6 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution in order to prove its case examined the following 3(three) witnesses:

PW1- Munsi Murmu.

PW2- Victim-A.

PW3- Dr. Hiranya Kumar Gayary.

- The statement of the accused person had been recorded U/S 313 Cr.P.C.
   The defence plea was of total denial. Defence had declined to defence evidence.
- 7. Situated thus, the points for determination in the instant case are set up as follows:-

- (I) Whether the accused person committed the offence of trafficking for the purpose of exploiting a minor i.e. the victim-A by practising fraud or deception and thereby committed the offence of trafficking punishable under Section 370(4) of IPC?
- (II) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A who is a minor girl aged about nine(09) years, and thereby committed an offence punishable under Section 6 of POCSO Act?

#### **DISCUSSION, DECISION AND REASON FOR DECISION:**

- 8. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsel Mr. Dwijen Kr. Boro. Learned defence counsel has argued that the ingredients of Section 370(4) IPC R/W Section 6 of POCSO Act have not been established in the present case against the accused person.
- 9. I have gone through the evidences on record. The prosecution to prove its case examined 03(three) witnesses. In her evidence, PW1 Sri Munsi Murmu, the informant of this case and father of the victim girl, had deposed that about four years back, his 18 years old daughter/victim-A was taken by the accused to his house at Bhalukpung under Arunachal Pradesh to work as domestic help. In the house of the accused, his daughter worked for four years. After four years, the accused brought her back to his house. After the accused brought his daughter back home, the people of his locality compelled PW1 to file a case against the accused. The people of his locality threatened to chase him away from the said locality. Then under compulsion he filed FIR before the Police. PW1 had put thumb impression in the FIR. In cross-examination he had stated that he could not say what was written in his FIR. He could not read and write. The FIR was not read over to him. The victim girl was given in marriage with the accused. Presently the victim has been continuing conjugal life with the

accused. The victim did not have birth certificate and her present age is 21 years.

- 10. PW2 is Victim-A. In her evidence she had deposed that about four years back, the accused took her to his house to work as domestic help. She stayed in the house of the accused for four years. During her stint in the house of the accused, She developed love affairs with the accused. When she returned back home, she was pregnant. Then, the villagers asked her father to file case against the accused. Thereafter, her father filed FIR before the Police. She was produced before the Magistrate for recording statement U/S 164 Cr.P.C. She put thumb impression in her statement recorded by the Magistrate. Later on, the accused solemnized marriage with her. She also gave birth to a son who is now aged about one year. In cross-examination she had revealed that she cannot read and write. She did not have birth certificate. The accused had first wife and four children. She fell in love with the accused though the accused was married. Her family members were aware about her love affairs with the accused. The physical relation between her and the accused took place with her consent. She gave statement before the Magistrate U/S 164 Cr.P.C as tutored by villagers. Now She have been living with the accused as husband and wife.
- 11. PW3 is Dr. Hiranya Kumar Gayary. In his evidence he had deposed that on 23-05-2017, he examined the victim girl at Udalguri Civil Hospital and on examination he found Radiological Age of the victim approximately between 16-17 years (sixteen to seventeen years), USG reveal single line foetus 27+1 week of gestation age and Hymen absent. Smear examination was done vide Regd. No –Lab report No.95 Mangaldoi Civil hospital 24-05-17 Reported by Pathologist Mangaldoi Civil Hospital shows no spermatozoa seen in the slide. Ext-1 is the Medical report and Ext-1(1) is the signature of PW3. In cross-examination he had stated that in his report, he did not mention the Police case number. He did not annex the report of Radiologist along with his report.

- 12. On appraisement of the evidences on record it is found that neither the victim girl nor her father, the informant, has adduced evidence implicating the accused in the allege offence of trafficking of person and sexual assault. PW1, the father of the victim, has deposed in his evidence that victim was eighteen(18) years old when the accused took her to his house to work as domestic help. According to PW1 he was compelled to lodge the false case against the accused by the people of is locality. PW2, the victim girl has also deposed that she consented to the physical relationship with the accused knowing fully well that the accused was married. According to PW3, the doctor, who examined the victim girl found radiological age of the victim approximately between sixteen to seventeen (16 to 17) years. There is no other document produced in the case in regard to the age of the victim. It is evident from the testimony of victim girl that she never attended any educational institution and she did not have birth certificate. Thus there is no other document with regard to the age of the victim except the opinion of doctor. Though the doctor has opined that the age of the victim was found between sixteen to seventeen (16-17) years, but the opinion of doctor is not specific as to the age of the victim. In case of medical opinion with regard to age the margin of error is two(2) years on either side and in such case the benefit of margin of error always goes in favour of the accused. Hence, in the instant case the opinion of doctor do not bring us to a definite conclusion that the victim was aged about below eighteen(18) years. Thus, it cannot be said that the consent given by the victim girl for physical relationship with the accused is not valid in the eye of law. Moreover, according to father of the victim, the victim was major when she went to the house of the accused to work as domestic help. There is also no evidence available on record that the accused practiced fraud or deception to take the victim girl to his house.
- 13. Therefore, it appears that the prosecution has failed to prove that the accused committed the offence of trafficking for the purpose of exploitation

6

of the victim by practicing fraud or deception and that the accused

committed aggravated penetrative sexual assault upon victim.

14. In view of above discussion it appears that the prosecution has failed to

establish the charges under Section 370(4) of IPC R/W Section 6 of POCSO

Act against the accused person.

15. Situated thus the points for determination are decided in the negative and

against the prosecution.

**ORDER** 

16. In the result, the accused person Tadek Nisso is found not guilty under

Section 370(4) of IPC R/W Section 6 of POCSO Act and acquitted of

charges under Section 370(4) of IPC R/W Section 6 of POCSO Act and set

with liberty forthwith.

17. Judgment signed, delivered and pronounced in the open court today the

14<sup>th</sup> day of March, 2019.

**Dictated and Corrected** 

(N.Talukdar)

**Addl. Sessions Judge** 

Udalguri

(N.Talukdar)

**Addl. Sessions Judge** 

Udalguri

# IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI. Special (POCSO) 22/2018 APPENDIX

(A) Prosecution Exhibits:

Ext.-1 : Medical report.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Munsi Murmu.

PW2- Victim-A.

PW3- Dr. Hiranya Kumar Gayary.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil

(N.Talukdar) Addl. Sessions Judge. Udalguri.