

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

:::UDALGURI

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

Special (POCSO) 06/2018

U/S 366-A IPC R/W Section 6 of POCSO Act

State of Assam

-Vs-

Rafiqul Islam.....Accused.

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. Tarun Ch. Boro, Learned Advocate.

Date of Evidence : 29-11-18: 16-02-19: 26-03-19: 26-04-19: 29-06-19.

Date of Argument : 02-08-2019.

Date of Judgment : 14-08-2019.

J U D G M E N T

1. The prosecution case in brief is that on 24-01-18, at about 03 pm victim girl went to Udalguri weekly market. She was taken away by a boy belonging to Muslim religion in a vehicle from Udalguri Bus stand. Thereafter, on 26-01-18, the victim and the boy were rescued by the police from Mangaldai. Hence, the mother of the victim girl lodged an FIR with the Officer-in-Charge of Udalguri P.S.
2. On the basis of the FIR, Udalguri PS Case No. 24/18, under Section 366 IPC R/W Section 6 of POCSO Act was registered and after completion of

investigation Police submitted charge-sheet under Section 366 IPC R/W Section 6 of POCSO Act against the accused person Rafiqul Islam.

3. 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 366-A IPC R/W Section 6 of POCSO Act, learned Special Judge framed charges there under and the ingredients of charges under Section 366-A 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. Thereafter, the learned Sessions Judge vide Order dated 02-04-19, transferred the case to this court for disposal.
4. The prosecution in order to prove its case examined the following 07(seven) witnesses:
 - PW1- Bangshilal Chouhan.
 - PW2- Meena Mandal.
 - PW3- Dr. Ganesh Das.
 - PW4- Ajay Deka.
 - PW5- Prabin Hazarika.
 - PW6- Victim-A.
 - PW7- WSI Nalini Brahma.
5. 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 adduce defence evidence.
6. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused person kidnapped victim-A, a girl under eighteen years of age, with intent that she might be forced to illicit intercourse with the accused?

(II) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A, aged about 16 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. Tarun Ch. Boro.
8. Learned Addl. P.P. has submitted that the victim, who is a minor girl, was taken away by the accused against her will. There is clear evidence of the victim girl that the accused committed rape upon her. Hence, accused is liable to be punished for committing offences under Section 366-A R/W Section 06 of POCSO Act.
9. Per contra learned defence counsel has submitted that the evidence adduced by the victim is contradictory to her previous statement recorded under Section 164 Cr.P.C. The testimony of the victim girl is not worthy of credence. She voluntarily went with the accused. The mother of the victim girl has filed the case in order to harass him.
10. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
11. PW1 is Bangshilal Chouhan. In his evidence PW1 had deposed that one day he went to Udalguri PS in connection with a case at that time one lady police officer asked him to put his signature in a paper and accordingly he put his signature. Ext 1 is the seizure list and Ext. 1(1) is the signature of PW1. PW1 knew nothing about the incident. Cross-examination of PW1 had been declined by the defence.
12. PW2 is Meena Mandal, informant and mother of the victim-A. In her evidence PW2 had stated that on the date of occurrence, at about 12.30 pm she along

with her husband went to market leaving her daughter alone at her house. At around 2-2.30 PM they returned from market but they found their daughter missing from their house. Then they made search of her whereabouts but they could not locate her nearby their house. Subsequently on that day they met one Guraya of their village and on being asked he told them that their daughter was taken by one Rafiqul in a truck to Mangaldai. Then she along with her son went to Mangaldai where the accused worked in a brick industry to trace out her daughter where she met the owner of the brick industry and asked him whether any driver named Rafiqul work in his brick industry. Then the manager replied that the accused drove truck in his brick company. Then she told the manager of the brick company regarding taking away of her daughter by the accused. On coming to know about this the manager of the brick industry talked with the accused over phone and later the accused was arrested by the police. On the next day of the incident her daughter was left by the accused at Rowta and from there she came home. On being asked her daughter narrated as to how accused forcefully took her away from their house against her will and consent. She lodged an FIR in this regard. She put thumb impression in the FIR which was written as per her version. At the time of incident her daughter was 16 years old. In cross-examination PW2 had stated that since before the incident accused used to come to their home. At that time the accused was friend of her son. She had not submitted school birth certificate of her daughter in this case. She did not see as to how her daughter went along with the accused. She also did not see as to who left her daughter at Rowta on the next day of incident. On the day of the occurrence during their absence her daughter went to market at around 3 PM to buy socks for her. She lodged the FIR after 2 days of the incident. She had not cited any explanation as to delay in lodgment of the FIR. PW2 had denied the suggestion that accused had not kidnapped her daughter on the day of occurrence. The accused used to visit frequently in their house before the incident. He also used to talk with her daughter now and then.

13. PW3 is Dr. Ganesh Das. In his evidence PW3 had deposed that on 27-01-18 he examined victim-A, at Udalguri Civil Hospital. On examination he found the following:-

Physical examination:-

Height- 164 cm, weight- 47 Kg, teeth- 14/15., axillary hair- present, pubic hair- present, breast- developed, hymen- , vaginal injury- , marks of violence- Nil,.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- 16-17 years.

(1) Right wrist joint- Epiphyseal union not completed. Ulna/radius.

(2) Right elbow joint- Epiphyseal uion completed Ulna/radius.

(3) Right illac crest- Epiphyseal union not completed.

PW3 had further deposed that in his opinion:

(1) Urine for BHCG.- Negative

(2) Epiphyseal union not completed wrist joint (radius/ulna).

(3) Epiphyseal union completed at elbow joint.

(4) Approximate age 16-17 years at the time of examination.

Ext. 1 is the medical report wherein Ext.1(1) is the signature of PW3.

In cross-examination PW3 had stated that he did not find any physical injury on the person of the victim during examination. He had reflected of the findings of the radiological report given by Radiologist Dr. A. Deka in his report.

14. PW4 is Ajay Deka. In his evidence PW4 had deposed that he did not know anything about the incident. He did not know as to why police cited him as witness of the case when he neither knew the informant nor the accused. Cross-examination of PW4 had been declined by the defence.

15. PW5 is Prabin Hazarika. In is evidence PW5 had deposed that he had no knowledge of the incident. He had a tea stall at Block Chowk near the Udalguri Police station. Cross-examination of PW5 had been declined by the defence.

16. Both PW 4 and 5 have no knowledge about the incident and as such their evidence has no assistance to the prosecution case.
17. The victim of this case has been examined as PW 6. In a case of sexual assault the evidence of victim is of utmost importance as conviction of the perpetrator of the offence can be based on the sole testimony of the victim. In her evidence PW6 had deposed that in the month of January 2018, the occurrence took place. On the date of occurrence, she was alone at home. At about 4 pm, the accused came to her house and he asked her to go with him. When she refused to go, the accused forcibly took her with him by his truck. The accused took her to Mangaldoi to the house of her cousin Parbati. On their way to Mangaldoi, near a bridge, the accused committed rape upon her. She told her cousin Parbati about the incident. After keeping her in the house of Parbati, the accused left away. Next day, the accused took her back and left her at Rowta from where she went to her home. Later on, her mother lodged the FIR. She was examined by the doctor through Police. She was produced before the Magistrate by the Police. Her statement had been recorded by the Magistrate. Ext-2 is the statement. Ext-2(1) is the signature of PW6. In cross-examination, PW6 had stated that the accused is friend of her elder brother. The accused used to frequently visit her home. PW6 had denied the suggestion that before the Magistrate she did not state that accused forcibly took her with him and committed rape upon her. Before the Magistrate she stated that accused took her to visit house of her relative. She stated before the Magistrate that the accused did not do bad work with her. PW6 had denied the suggestion that her mother had filed this case falsely in order to harass the accused.
18. PW7 is WSI Nalini Brahma, Investigating Officer of this case. In her evidence PW7 had deposed that on 26-01-2018, she was working as In-charge Women Cell, Udalguri PS. On that day, on receiving a written FIR lodged by

Mina Mandal, O/c Udalguri PS registered Udalguri PS case No. 24/18 U/S 366 IPC r/w section 6 of Pocso Act and entrusted PW7 to investigate the case. During investigation of the case PW7 proceeded to Mangaldoi PS where the accused and victim girl were detained, took custody of the accused and the victim girl and brought them to Udalguri PS, accused was arrested and produced before the Court, the victim girl was sent to medical examination and she was produced before the court for recording her statement U/S 164 Cr.P.C. The Ld. court after recording statement of the victim girl U/S 164 Cr.P.C allowed the custody of the victim to her mother. PW7 visited the place of occurrence which is a tracker stand near Udalguri PS, prepared the sketch map of the place of occurrence, recorded the statements of informant and other witnesses and seized the school certificate of the victim through Ext-1 –seizure list. Ext-1(2) is the signature of PW7 in the seizure list. Later on, the seized school certificate was handed over to the informant. After completion of investigation, having found sufficient materials against the accused, PW7 submitted charge-sheet U/S 366 IPC r/w section 6 of Pocso Act. Ext-2 is the FIR lodged by the informant Mina Mandal. The informant had put thumb impression in the FIR. Ext-2(1) is the signature of O/c Narayan Patangia under the registration note. PW11 is acquainted with his signature. Ext-3 is the sketch map of place of occurrence. Ext-3(1) is the signature of PW7. Ext-4 is the charge-sheet. Ext-4(1) is the signature of PW7. In cross-examination, PW7 had stated that as per the FIR, the victim girl went missing on 24-01-2018. The FIR was lodged on 26-01-18. In the FIR, the cause of delay had not been explained.

19. On appraisalment of the evidence on record it is found from the testimony of mother of the victim girl that she was previously acquainted with the accused. She revealed in cross-examination that the accused was the friend of her son. He used to visit her home frequently before the incident. It is also found that the victim girl (PW6) admitted in cross examination that she stated before the Magistrate that the accused did not do bad work with her. Though in her examination in chief the victim (PW6) deposed that accused

forcibly took her away and committed rape upon her but such evidence of the victim is inconsistent with her earlier statement made before the Magistrate under Section 164 Cr.P.C. It is evident from Ext.-2 the statement of the victim recorded under Section 164 Cr.P.C. that the victim stated before the Magistrate that she had love affairs with the accused and on the date of occurrence she was taken to the house of her relative and in the night she was kept in the house of another person. She also stated that the accused did not do bad work with her. Therefore, the evidence of the victim girl is inconsistent with her previous statement made before the learned Magistrate and as such her evidence is not worthy of credence. It is settled position of law that sole testimony of the victim is sufficient to form the basis of conviction if her testimony is inspiring confidence. However court can seek corroboration if the testimony of the victim is suffered from infirmities. The victim of the instant case has changed her statements. Therefore, while looking for the corroborative evidence it is found that other prosecution witnesses have no knowledge about the incident. PW 1, 4 and 5, who are the independent witnesses of the case did not know anything about the incident. The medical evidence also did not corroborate the prosecution case. On examination of the victim the PW 3, the doctor found no physical injury on the private parts of the victim. Moreover, though PW2, the mother of the victim had deposed that the victim narrated to her that the accused forcibly took her away against her will and consent but there is no evidence from PW2 that the victim stated before her that the accused committed rape upon her. There is no evidence adduced by PW2 that the accused committed rape upon her daughter. Moreover according to the victim the accused took her to the house of her cousin Parbati and kept her there. Thus Parbati is a material and vital witness of the case. But prosecution has failed to examine Parbati which casts a reasonable doubt as to the prosecution case.

20. In the instant case the evidence of the victim is suffered from infirmity and as such not inspiring confidence. The revelation made by the victim during cross examination wholly demolished the credibility of her testimony. The

evidence of the victim is inconsistent with her previous statement recorded by learned Magistrate under Section 164 Cr.P.C. Moreover, her evidence is not wholly corroborated by her mother. The other prosecution witnesses have also not supported the prosecution case.

21. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 366-A IPC R/W Section 06 of POCSO Act against the accused person beyond all reasonable doubt.
22. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

23. In the result, the accused Rafiqul Islam is found not guilty under Section 366-A IPC R/W Section 06 of POCSO Act and acquitted of charges under Section 366-A IPC R/W Section 06 of POCSO Act and set with liberty forthwith.
24. Bail bond executed by the accused Rafiqul Islam and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.
25. Judgment is signed, delivered and pronounced in the open court today the 14th day of August, 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) 06/18

APPENDIX

(A) Prosecution Exhibits :

Ext.-1: Seizure List.

Ext.-1: Medical report.

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

Ext.-2: FIR.

Ext.-3: Sketch map.

Ext.-4: Charge-sheet.

(B) Material Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Bangshilal Chouhan.

PW2- Meena Mandal.

PW3- Dr. Ganesh Das.

PW4- Ajay Deka.

PW5- Prabin Hazarika.

PW6- Victim-A.

PW7- WSI Nalini Brahma.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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