

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**:::UDALGURI**

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

**Special (POCSO) 38/2018**

**U/S 366-A/376 IPC R/W Section 6 of POCSO Act**

**State of Assam**

**-Vs-**

**Abdul Kalam.....Accused person.**

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

For the Accused : Mr. M.P. Rabha, Learned Advocate.

Date of Evidence : 29-07-19: 14-08-19.

Date of Argument : 21-08-2019.

Date of Judgment : 27-08-2019.

**J U D G M E N T**

1. The prosecution case in brief is that on 16-07-17, at about 06 am, the victim went to her college but till the evening she did not return back home. Though search was made but she could not be traced out. Hence, father of the victim girl lodged an FIR with the In-charge of Ranipukhuri Police outpost. On the basis of the FIR, Kalaigaon PS Case No. 77/17, under Section 366-A IPC was registered and later on added Section 4 of POCSO Act and after completion of investigation Police submitted charge-sheet under Section 366-A IPC R/W Section 4 of POCSO Act against the accused person Abdul Kalam.

2. Thereafter, the learned Special Judge vide Order dated 08-01-19, transferred the case to this court for disposal.
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/376 IPC R/W Section 6 of POCSO Act, charges were framed there under and the ingredients of charges under Section 366-A/376 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.
4. The prosecution in order to prove its case examined the following 03(three) witnesses:
  - PW1- Md. Rahman Ali.
  - PW2- Victim-A.
  - PW3- Dr. Bimal Ch. Boro.
5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence has declined to adduce evidence.
6. Situated thus, the points for determination in the instant case are set up as follows:-
  - (I) Whether the accused induced victim 'A' a minor girl under the age of 18 years with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry him against her will or that she might be forced or seduced to illicit intercourse with him?
  - (II) Whether the accused committed rape on victim-A?
  - (III) Whether the accused committed aggravated penetrative sexual assault upon Victim-A, aged about 17 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. M.P. Rabha.
8. Learned defence counsel has argued that there is no evidence at all against the accused adduced by the prosecution witnesses that he took the victim girl forcibly to Karnataka and that he committed sexual assault upon her. The accused is brother-in-law of the victim with whom the victim voluntarily went to Karnataka in search of work. As per the medical evidence the victim was aged about 17-18 years. The father of the victim did not state the age of the victim in his evidence. Therefore, except the medical evidence there is no evidence with regard to the age of the victim. The accused is entitled to get the benefit of error of margin of two years while calculating the age of the victim on the basis of the radiological report. As such on the date of occurrence the victim was a major woman. Hence, the consent given by the victim to go with the accused is a valid consent under the law. Moreover, there is no evidence at all that the accused committed sexual assault upon the victim. Hence, prosecution has miserably failed to prove the charges against the accused.
9. 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.
10. PW1 is Md. Rahman Ali, the informant of this case and father of the victim girl. In his evidence PW1 had deposed that accused is his son-in-law. On the date of occurrence, in the morning, his daughter victim-A went to her college. While she did not return back till the evening, PW1 made search for her but failed to trace her out. Then he lodged written FIR with the In-charge of Ranipukhuri OP. At the time of incident, his son-in-law accused

Abdul Kalam went to Bangalore in search of work. After about 20-25 days of the incident, he came to know from the Police that his daughter was at Karnataka with the accused. Later on, the accused took his daughter back home. On being asked his daughter informed him that she had gone to Karnataka with her brother-in-law i.e. the accused on her own volition in search of work. His daughter is now with him and she has been studying in college. Ext-1 is the FIR. Ext-1(1) is the signature of PW1. In cross-examination, PW1 had stated that due to misunderstanding he lodged the FIR. He had no allegation against the accused.

11. PW2 is victim-A. In her evidence PW2 had deposed that about two years back, the occurrence took place. On the date of occurrence, she went to Karnataka with her brother in law accused Abdul Kalam without informing her parents. She went to Karnataka in search of work. She stayed there for about three months. Thereafter her brother-in-law took her back to home. After returning home, she learnt about filing of the instant case by her father. She was medically examined by the doctor. She was produced before the court where her statement had been recorded by learned Magistrate U/S 164. Cr.P.C. Ext-2 is the statement. Ext-2(1) is the signature of PW2. In cross-examination, PW2 had stated that she went to Karnataka on her own volition. The accused did not have sexual intercourse with her during her stint at Karnataka. She cannot recollect her statement given before the Magistrate. She had no allegation against the accused.

12. PW3 is Dr. Bimal Ch. Boro. In his evidence PW3 had deposed that on 19-11-2017, he examined victim-A, at Udalguri Civil Hospital vide reference Kalaigaon PS Case No. 77/2017 U/S 366(A) IPC. On examination he found the following:

Height: 164 cm, Weight: 43 kg, Teeth: 28 numbers, Breasts: developed, Auxillary Hair: present, Pubic hair: present, Vaginal injury: Nil, Hymen: absent, Marks of violence: Nil, LMP: 02-11-2017

Smear examination vide Regd. No. 16726 (UCH)

Reported by Pathologist – Mangaldoi Civil hospital shows no spermatozoa in the slide.

X-ray examination of the right wrist, elbow and iliac crest vide plate No. 2411 dated 19-11-2017 reported by Radiologist Dr. A. Deka shows Right wrist joint- Epiphyseal union completed in upper end of radius and ulna, Right elbow joints- Epiphyseal union completed in lower end of humerus and lower end of ulna, Right iliac crest – Epiphyseal union not completed in lower end of radius and in iliac crest.

Urine for pregnancy (BHCG) test on 19-11-2017 shows HCG Negative (-ve),

Ultrasonography of Abdomen on 19-11-2017 by sinologist Dr. A. Deka reported as reveals Cholelithiasis and rest of organs shows normal echo feature

PW3 had deposed that in his opinion:

1. No spermatozoa seen in the slide.
2. Approximate age 17-18 (seventeen to eighteen) years.
3. Urine HCG Negative (-ve).
4. USG reveals Cholelithiasis and rest of organs shows normal echo feature.

Ext-3 is the report and Ext-3(1) is the signature of PW3.

Cross-examination of PW3 had been declined by the defence.

13. On appraisalment of evidence on record it appears that PW1, the father of the victim girl had categorically stated in his evidence that he came to know from his daughter that she had gone to Karnataka with the accused, who is her brother in law, on her own volition in search of work. In cross-examination, PW1 had also revealed that he had no allegation against the accused; due to misunderstanding he lodged that FIR. PW2, the victim has also stated that she on her own volition went with the accused to Karnataka in search of work. In cross-examination, she also revealed that the accused did not have sexual intercourse with her during her stint at

Karnataka. The victim on the date of recording her statement stated her age as about twenty years. The incident happened about two years back. The radiological age of the victim as appeared from the evidence of PW3, the Medical Officer, is approximately 17-18 years. There is always error of margin of two years in determining the age of a person on the basis of radiological report. Hence, having gone through the evidence of the victim and the medical evidence I am of the considered view that on the date of occurrence the victim was a major woman. Being a major woman she is entitled to go with anyone and to anywhere according to her will. Therefore, the accused has committed no offence by taking the victim to Karnataka on the consent given by her. There is no such evidence that accused used force or obtained the consent of the victim through inducement. It is also found from the evidence on record that the accused did not have sexual intercourse with the victim nor did he commit any other sexual act with her. Therefore, from the evidence on record it is found that prosecution has miserably failed to prove the ingredients of offence under Section 366-A/376 IPC R/W Section 6 of POCSO Act against the accused.

14. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 366-A/376 IPC, R/W Section 6 of POCSO Act against the accused person beyond all reasonable doubt.
15. Situated thus the points for determination are decided in the negative and against the prosecution.

### **ORDER**

16. In the result, the accused Abdul Kalam is found not guilty under Section 366-A/376 IPC, R/W Section 6 of POCSO Act and acquitted of charges under Section 366-A/376 IPC, R/W Section 6 of POCSO Act and set with liberty forthwith.

17. Bail bond executed by the accused Abdul Kalam and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

18. Judgment is signed, delivered and pronounced in the open court today the 27<sup>th</sup> 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) 38/18**

**APPENDIX**

(A) Prosecution Exhibits :

Ext.-1: FIR.

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

Ext.-3: Medical report.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Md. Rahman Ali.

PW2- Victim-A.

PW3- Dr. Bimal Ch. Boro.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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