

IN THE COURT OF THE ADDITIONAL SESSION JUDGE::::UDALGURI

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

Special (POCSO) 53/2019

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

State of Assam

-Vs-

Md. Mijul Hoque @ Sali @ Apa.....Accused.

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

For the Accused : Mr. T. C. Boro, Learned Advocate.

Date of Evidence : 18-01-20: 21-01-20: 07-03-20.

Date of Argument : 12-03-2020.

Date of Judgment : 12-03-2020.

J U D G M E N T

1. The prosecution case in brief is that on 11-10-2018, the accused forcibly took away the victim girl from her home. Hence, the mother of the victim lodged an FIR with the Officer-in-Charge of Tangla P.S. On the basis of the FIR, Tangla PS Case No. 160/18, under Section 366 IPC. Later on, during investigation Section 6 of POCSO Act was added. After completion of investigation Police submitted charge-sheet under Section 366/376 IPC R/W Section 6 of POCSO Act against the accused Mijul Hoque @ Sali @ Apa.

2. 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 366/376 IPC R/W Section 6 of POCSO Act, learned Special Judge framed charges thereunder and the ingredients of charges under Section 366/376 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. Thereafter, the learned Special Judge vide Order dated 21-01-2020, transferred the case to this court for disposal.
3. The prosecution in order to prove its case examined the following 04(four) witnesses:
 - PW1- Smt. Sarala Bania.
 - PW2- Dr. Chandan Saha.
 - PW3- Victim-A.
 - PW4- ASI Turan Ch. Nath.
4. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
5. Situated thus, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused kidnapped victim-A with the intent that she may be compelled or knowing it to be likely that she would be compelled to marry against her will or that she may be forced or seduced to illicit intercourse?
 - (II) Whether the accused committed rape on victim-A?
 - (III) Whether the accused committed aggravated penetrative sexual assault upon the victim-A, aged about 17 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

6. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. T. C. Boro.
7. Learned defence counsel has argued that the victim girl was major at the time of incident as deposed by the victim herself and informant. The informant had deposed that her daughter had love affairs with the accused since before the incident and she voluntarily eloped with the accused. Therefore, the ingredients of Section 366/376 I.P.C., R/W Section 6 of POCSO Act have not been established in the present case against the accused person.
8. 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.
9. PW1 is Smt. Sarala Bania, mother of the victim girl and informant of the instant case. In her evidence PW1 had deposed that the occurrence took place on 11.10.2018. On that day, she alongwith her victim daughter proposed to go to Tangla together. But PW1 daughter told her that she would first go to her school to collect HSLC admit card and thereafter she would go to Tangla. Accordingly her daughter left for school in the morning but she did not return in the as usual time. So, PW1 went to the school but she could not be found there. Then PW1 thought that her daughter had gone to Tangla already so she also proceeded to Tangla separately but she could not be found at Tangla. Thereafter she enquired as to whereabouts of her daughter from the bus drivers of the Tangla bus stand. Then one person told her that her daughter was seen alongwith one boy. On getting this information PW1 lodged an FIR with the Tangla PS. On the basis of her FIR accused was arrested and her victim daughter was recovered. Later on, she came to know that her daughter had love affair with the accused since before the incident and, as such, she voluntarily eloped with

the accused. Her daughter was 18 years old at the time of occurrence. After the incident her daughter again went to the house of the accused and stayed with him. Ext.1 is the FIR. Ext.1(1) is the signature of PW1. In cross-examination, PW1 had stated at present her daughter is staying with the accused. They want to bring her back to their home but she refused to come as she told before them that she had already entered into marriage with the accused.

10. PW2 is Dr. Chandan Saha. In his evidence PW2 had deposed that on 8.6.19, he was posted as M & HO at Udalguri Civil Hospital. On that day at 2 PM he examined victim-A in connection with Tangla PS case No. 160/2018 U/S 366 IPC. The girl was escorted by WPC/562 Suman Dey. On examination he found the following:-

Physical examination:-

Height- 150cm, weight- 20 KG, teeth- 30 Nos., axillary hair- present, pubic hair- present, breast- developed, hymen- Absent, clothing- churidar.

Vaginal swab examination for spermatozoa:- no spermatozoa.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- 17-18 years.

(1) Right wrist joint- Epiphyseal union completed in upper end of radius and ulna.

(2) Right elbow joint-

(3) Right iliac crest.- Epiphyseal union completed in lower end of radius.

Ultrasonography of Abdomen: normal echofeature of organs imaged.

PW2 had deposed in his opinion that

(1) Pregnancy test negative for pregnancy.

(2) No sign of violence seen.

(3) No spermatozoa seen in slide test.

(4) Radiological age is between 12-15 years.

Ext. 2 is the medical report wherein Ext. 2(1) is the signature of PW2.

Cross-examination of PW2 had been declined by the defence.

11. PW3 is the victim girl, wife of accused. In her evidence PW3 had deposed that accused married her socially after the incident. The occurrence took place one year ago. Since before the incident she had love affairs with the accused. On the day of occurrence she voluntarily left her home to get married with the accused. When her parents did not find her at their house she lodged an FIR. On the basis of the FIR accused was arrested. She was also brought to the police station and sent for medical examination. Her statement also got recorded U/S 164 Cr.P.C. Accused did not kidnap her. Rather she on her own accord left her parental home. At the time of incident she was above 18 years. Accused did not compel her to go alongwith him forcefully. Cross-examination of PW3 had been declined by the defence.

12. PW4 is ASI Turan Ch. Nath, Investigating Officer of this case. In his evidence PW4 had deposed that on 11-10-2018, he was working as ASI of Tangla PS. On that day, on receiving a written FIR lodged by Sarala Bania, O/c Tangla PS registered Tangla PS case No. 160/2018 U/S 366 IPC and endorsed the case to PW4 for investigation. In course of investigation he recorded statement of the informant and other witnesses U.S 164 Cr.P.C, visited the place of occurrence and prepared the sketch map of place of occurrence. He produced the victim before the learned Magistrate who recorded her statement U/S 164 Cr.P.C. The victim was produced before the doctor for her medical examination. PW4 seized the birth certificate of the victim and handed over the original birth certificate to the informant keeping a Xerox of the same in the record. Later on, he arrested the accused Mijul Hoque and produced him before the learned Court who forwarded him to judicial custody. After completion of investigation, having found sufficient materials against the accused, he submitted charge-sheet against accused Mijul Hoque U/S 366/376 IPC r/w section 6 of Pocso Act. Ext-4 is the sketch map. Ext-4(1) is the signature of PW4. Ext-5 is the seizure list. Ext-5(1) is the signature of PW4. Ext-6 is the charge-sheet.

Ext-6(1) is the signature of PW4. Cross-examination of PW4 had been declined by the defence.

13. On appraisalment of the evidence on record it appears that neither the victim girl nor her mother (informant) had adduced evidence implicating the accused. According to evidence of PW1, the mother of the victim girl and informant of this case has deposed that she lodged the FIR as because she could not trace out the victim girl, who was proceeding to Tangla to collect HSLC Admit card. After lodgment of the FIR, PW1 came to know that the victim voluntarily eloped with the accused as she had love affairs with the accused since before the incident. PW1 had stated in her cross-examination that the victim had entered into marriage with the accused. PW3, the victim girl has also deposed nothing implicating the accused. It appears from the deposition of PW3 that she voluntarily eloped with the accused to get married with him. Though the radiological examination report of the victim revealed that the victim was aged about 17 to 18 (seventeen to eighteen) years at the time of examination but according to PW1, the mother of the victim and PW3 the victim girl, at the time of incident the victim was aged above eighteen years. The prosecution has not produced the original birth certificate of the victim girl to proof her age. Hence, on the basis of evidence of PW1 and PW3 it appears that at the time of incident victim was a major girl and competent to give valid consent. Hence, the instant elopement of the victim girl with the accused does not constitute any incident of kidnapping as the victim being a major voluntarily eloped with him. Moreover, there is no evidence available on record that the accused forcibly had sexual intercourse with the victim.
14. In view of above discussion it appears that prosecution has miserably failed to prove the charges under Section 366/376 IPC R/W Section 6 of POCSO Act against the accused Mijul Hoque @ Sali @ Apa.

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

ORDER

16. In the result, the accused Mijul Hoque @ Sali @ Apa is found not guilty under Section 366/376 IPC R/W Section 6 of POCSO Act and acquitted of charges under Sections 366/376 IPC R/W Section 6 of POCSO Act beyond all reasonable doubt and set at liberty forthwith.

17. Bail bond executed by the accused 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 12th day of March, 2020.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

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IN THE COURT OF ADDL. SESSIONS JUDGE:.....UDALGURI.**Special (POCSO) 53/2019****APPENDIX**

(A) Prosecution Exhibits :

- Ext.-1 : FIR.
- Ext.-2 : Medical report.
- Ext.-3 : Statement of the victim U/S 164 Cr.P.C.
- Ext.-4 : Sketch map.
- Ext.-5 : Seizure list.
- Ext.-6 : Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

- PW1- Smt. Sarala Bania.
- PW2- Dr. Chandan Saha.
- PW3- Victim-A.
- PW4- ASI Turan Ch. Nath.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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