

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

:::UDALGURI

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

**Special (POCSO) 25/2018
Under Section 06 of POCSO Act.**

State of Assam

-Vs-

Usman Goni @ Mandal Ali.....Accused.

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

For the Accused : Mr. Madhab Ch. Narzary, Learned Advocate.

Date of Evidence : 04-12-18: 10-01-19: 14-02-19.

Date of Argument : 23-07-19.

Date of Judgment : 03-08-19.

J U D G M E N T

1. The prosecution case in brief is that on 05-05-18, informant Nur Islam lodged an FIR with the Officer-in-Charge of Udalguri P.S. alleging that about six months back the accused committed rape upon the sixteen years old minor daughter of the informant with a false promise of marriage. When the informant came to know about the incident of rape he took the victim to the house of the accused and handed over to the accused but the parents and relatives of the accused refused to keep the victim in their house. When the informant objected, they chase to assault him taking lathi, dao etc. Then find no way the informant returned back to his home and informed the village

headman about the incident. Thereafter, as per advise of the villagers he lodged the FIR.

2. On the basis of the FIR, Udalguri PS Case No. 102/18, under Section 6 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 6 of POCSO Act against the accused person Usman Goni @ Mandal Ali.
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 6 of POCSO Act, learned Special Judge framed charge there under and the ingredients of charge under 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 26-03-19, transferred the case to this court for disposal.
4. The prosecution in order to prove its case examined 09(nine) witnesses:
 - PW1- Nur Islam.
 - PW2- Dr. Arindam Bora.
 - PW3- Jainal Abdin.
 - PW4- Harmuz Ali.
 - PW5- Victim-A.
 - PW6- Maha Ali.
 - PW7- Abdul Hamid.
 - PW8- Rahima Khatun.
 - PW9- 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 evidence.

6. Situated thus, the point for determination in the instant case are set up as follows:-
- (I) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A, who is a minor girl 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. Madhab Ch. Narzary.
8. Learned counsel for the prosecution has submitted that the accused committed rape upon the victim promising to marry her, the victim is a minor girl. Hence the prosecution as proved beyond all reasonable doubt that the accused has committed offence under Section 06 of POCSO Act.
9. Per contra learned defence counsel has submitted that the contents of the FIR would reveal that the victim went voluntarily to the house of the accused on the date of occurrence and when the family members of the accused refused to accept her, the instant case was filed against the accused. The evidence adduced by the informant and the victim girl before the court is inconsistent with the prosecution version of the case as emanated from the FIR. The evidence of victim girl is not at all trustworthy; there are material discrepancies in her evidence. Moreover, the independent witnesses of the case have not supported the prosecution case.
10. Before appreciating the argument 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, Nur Islam is the informant and father of the victim. In his evidence PW1 had deposed that the occurrence took place about 6 months ago and

on that day he went to Karimganj to see his religious priest (Guru). After staying for 15 days at Karimganj he returned home and came to know that his daughter was not at home. In this regard on being enquired to his daughter-in-law, she informed PW1 that on the previous day of his return the accused forcefully took his daughter to accused house. On getting this information PW1 immediately rushed to the house of accused which was situated at a distance of ½ km from his house. PW1 found his daughter at the house of the accused along with the accused and his family members. As soon as PW1 reached the house of accused his family members refused to accept his daughter and asked him to take her to his home. Finding no alternative, PW1 brought his daughter to home. On being asked his daughter told him that on the previous day she was kidnapped by accused and committed rape on her on the promise of marrying her. After the incident PW1 lodged an FIR before the police in connection with this incident where he put his thumb impression. In cross-examination PW1 had revealed that after this incident accused got married with other women. PW1 did not know what was written in the FIR. The FIR was written by a scribe but he did not write as per his version nor did he read over the FIR before obtaining his thumb impression. The Police had recorded his statement. PW1 had denied the suggestion that his daughter grew love towards the accused without the knowledge of the accused and she was willing to get married with the accused but when the accused was not interested towards her he framed a false allegation against the accused that accused committed rape on her for taking revenge.

12. PW2 is Dr. Arindam Bora. In his evidence PW2 had deposed that on 09-05-2018 he examined the victim at Udalguri Civil Hospital and on examination he found approximate age 16-17 years and Pregnancy test (-ve) negative. Ext.1 is the medical report, wherein Ext. 1(1) is the signature of PW2. In cross-examination PW2 had stated that in his report he had not mentioned that on examination he found sign of recent sexual intercourse.

He had also not mentioned whether he had neither found mark of violence in the private parts of the victim nor external injury on her persons.

13. PW3 is Joyal Abdein. In his evidence he had deposed that on the day of occurrence the victim went to the house of accused and on being asked as to why she was coming to the house of accused she replied that she grew love towards the accused. In cross-examination, PW3 had stated that before 2-3 months prior to the incident the accused solemnized marriage with another woman. When the victim visited the house of accused he went to his father in law's house.
14. PW4, Harmuz Ali. In his evidence PW4 had deposed that he heard had in his house that the victim on her own volition went to the house of accused to get married with him. The accused solemnized marriage with another woman before 2-3 months of incident, and as such his family member refused to keep the victim at their house. Cross-examination of PW4 had been declined by the defence.
15. PW5 is the victim of this case. In her evidence she had deposed that the occurrence took place about 6 months ago. About 6 months ago, one day accused committed rape on her by taking her into a deserted house on the promise of marrying her. As accused promised to marry her, she did not disclose the matter to her parents. Subsequently, the accused married to another girl by breaking the promise to marry her. When she came to know the accused marry another girl she demanded the accused to marry her. Though the accused was willing to marry her in spite of his marriage with the first wife few days back but his family member protested against the wish of accused and as such accused did not keep her as his wife. Having found no alternative, her father lodged this case. Police sent her for medical examination and also got her statement recorded before the Magistrate U/S 164 CrPC. Ext. 2 is her statement U/S 164 CrPC. Ext. 2(1) & Ext. 2(2) are the signatures of PW5. At the time of occurrence she was 14 years old. She had

not submitted the school certificate to prove her age. In cross-examination she had stated that her house is at a distance of 10 minutes' walk from the house of accused. She had denied the suggestion that she had stated before the police that she had love affair with the accused for about 3 years from the date of incident. She had denied the suggestion that she had not stated before the police that the accused dragged her to a deserted house by gagging her mouth with a cloth and committed rape on her. The accused took her from her house on the date of occurrence at around 10:00 PM. Her family members did not know that the accused dragged her away from her room though they were present in the house. She did not make this statement before the police. As accused gagged her mouth with cloth, so she could not raise shout when he kidnapped her from her house. The house where the accused committed rape on her was an abandoned house. The distance of the abandoned house where accused committed rape upon her is situated at a distance of 15 minutes' walk from her house. She did not meet any person while accused dragged her to abandoned house. Before the incident accused also gave her a mobile phone to talk with him. Accused called her over mobile phone to come out on the day of occurrence. Accordingly she came to join hands with him. She had denied the suggestion that on the date of occurrence the accused did not kidnap her forcefully and committed rape on her. If the accused had married her when she went to his house she would not have lodged this case.

16. PW6, Maha Ali is the brother of the victim. In his evidence PW6 had deposed that on the day of occurrence at about 7:00 PM, his mother came to his home situated in the same compound and asked him whether his victim sister came to his home. PW6 told his mother that the victim did not come to his home. Then his mother returned to her own home adjacent to his home. After 10 minutes three persons from the house of accused came to his home and told him that the victim is in the house of accused and asked him to bring her to her own home. On the next day of the incident, in the morning, he along with his two friends went to the house of accused. Police also came

there and victim was taken to the Police Station. Subsequently, police also took his parents to Police station from his house. Later, he went to police station and brought his parents back to home after putting his signature in some papers. In cross-examination, PW6 had stated that he do not know as to how his sister went to house of accused Mandal.

17. PW7, Abdul Hamid. In his evidence PW7 had deposed that one day when he was coming to the Udalguri court for performing his work as a Petition writer at around 9 AM, his neighbors told him that some incident had taken place at the house of accused as he brought the victim girl to his house. Later, he also heard from some other people that the victim voluntarily came to the house of accused. After two days of the incident while he was proceeding to his home from the Udalguri court some police personnel accosted him in the evening on the way and asked me to put his signature in a paper. On being queried as to why his signature was necessary then the police personal told him that his signature was necessary to prove that they came to the place of occurrence in connection with the incident. At the time of occurrence the victim girl was around 15 years old. In cross-examination PW7 had stated that he only heard that the victim came to the house of accused on the evening of the date of incident by herself. After hearing about this he did not go to the house of accused. Afterwards what happened is not known to him.
18. PW8, Rahima Khatun. In her evidence she had deposed that on the date of occurrence, the mother of the victim told her that the accused brought her daughter to his house with a view to solemnize marriage with her. PW 8 did not know as what happened thereafter. But later on after some days, she came to know the accused married another girl. In cross-examination, PW8 had stated that the victim came to the house of the accused after solemnization of marriage by the accused with another girl prior to three months of date of occurrence.

19. PW9, W.S.I. Nalini Brahma is the Investigating Officer of this case. In her evidence she had deposed that on 05-05-18, she was posted as I/C women cell at Udalguri P.S. On that day one Nur Islam lodged an FIR with the O/C Udalguri PS. On the basis of the said FIR the O/C Udalguri PS registered the case being Udalguri PS case No. 102/18 U/S 6 of POCSO act and entrusted her the investigation of the case. In the course of investigation she visited the place of occurrence, recorded the statement of complainant U/S 161 CrPC and also recorded the statement of available witnesses U/S 161 CrPC. She prepared a site plan of the place of occurrence, recorded the statement of the victim and also got her statement recorded before the magistrate U/S 164 CrPC. The victim was sent for medical examination, collected the medical examination report. Later the accused appeared before the Udalguri PS and he was arrested and sent up to the custody. After perusal of the case diary having found prima-facie materials to prosecute the accused, the charge-sheet was submitted against the accused U/S 6 of POCSO Act. before the court. Ext. 3 is the charge sheet. Ext. 3(1) is the signature of PW9. In cross-examination PW9 had stated that the FIR was lodged by the informant against four persons including the accused. In course of the investigation she did not find any materials against the other persons except the accused and they are shown as not sent up for prosecution in the charge-sheet. The victim was produced before the police station by her father at the time of the investigation of the case. She did not visit the house of the accused at the time of investigation. She did not seize any articles in connection with this case. She recorded the statement of all the witnesses U/S 161 CrPC on the same day during investigation. The victim was sent to get her statement recorded before the Magistrate on 11/05/18 and for her medical examination on 09-05-18.

20. PW9 was re-examined by the Court. On re-examination PW9 had deposed that on receiving a written FIR from informant Nur Islam, O/C Udalguri Inspector Narayan Patangia registered Udalguri P.S. Case No. 102/18 under Section 6 of POCSO Act. Ext.-4 is the FIR. Ext.-4(1) is the signature of O/C

Narayan Patangia under the registration note. PW9 was acquainted with the signature of O/C Narayan Patangia. Ext.-5 is the sketch map of place of occurrence prepared by him during investigation. Ext.5(1) is the signature of PW9. Cross-examination had been declined by the defence.

21. On careful scrutiny of the evidence on record it is found that according to father (PW1) of the victim on getting the information from his daughter-in-law that his victim daughter was forcibly taken by the accused to his house, he went there where the family members of the accused asked him to take his daughter back for which he brought his daughter back home. He was told by the victim that previous day she was kidnapped by the accused and committed rape upon her by the accused with a promise of marriage. On the other hand, according to PW5, the victim, about six months back one day accused committed rape upon her by taking her in a deserted house with a promise to marry her. As the accused promised to marry her she did not disclose the matter to her parents. Subsequently the accused married to another girl by breaking the promise to marry her. Thus, it appears that there is material discrepancy in the evidence of the victim and her father with regard to the time as to when the incident of rape had taken place. According to the father of the victim the incident of rape had taken place on the previous day of the incident when the victim was brought from the house of the accused. Whereas according to the victim after the incident of rape she remained silent and only when the accused married another girl she protested.
22. Though it was alleged that the accused forcibly took the victim to his house but there is no evidence on the part of the victim that the accused forcibly took her to his house. In cross-examination she revealed that when the accused called her out over phone she came with him. Before the incident the accused gave her a mobile to talk with her. Moreover, in cross-examination victim has clearly stated that if the accused had married her when she went to his house she would not have lodged this case.

23. The inconsistency and discrepancies in the evidence of PW 1, PW 5 and PW6, who are the material and vital prosecution witnesses, are so glaring and significant that it raises a reasonable doubt as to the truthfulness of the testimony of PW1 and PW5 that the accused committed rape upon the victim.
24. Moreover, the other prosecution witnesses including the brother of the victim did not depose anything implicating the accused in the alleged incident of rape. The evidence of PW3, 4 and 8 is to the effect that despite the marriage of the accused with another woman prior to three months of the date of occurrence, the victim went to his house to solemnize marriage with the accused. The evidence of PW7 is hearsay. He had heard two different versions from the people about the occurrence. One version is that the accused took the victim to his house while the second version is that the victim voluntarily went to the house of the accused. None of the independent witnesses of the case has supported the prosecution case.
25. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 6 of POCSO Act against the accused person beyond all reasonable doubt.
26. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

27. In the result, the accused Usman Goni @ Mandal Ali is found not guilty under Section 6 of POCSO Act and acquitted of charge under Section 6 of POCSO Act and set with liberty forthwith.

28. Bail bond executed by the accused Usman Goni @ Mandal Ali and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

29. Judgment is signed, delivered and pronounced in the open court today the 03rd 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) 25/18****APPENDIX**

(A) Prosecution Exhibits :

Ext.-1: Medical report.

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

Ext.-3: Charge-sheet.

Ext.-4: FIR.

Ext.-5: Sketch map.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Nur Islam.

PW2- Dr. Arindam Bora.

PW3- Jainal Abdin.

PW4- Harmuz Ali.

PW5- Victim-A.

PW6- Maha Ali.

PW7- Abdul Hamid.

PW8- Rahima Khatun.

PW9- WSI, Nalini Brahma.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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