

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

::::UDALGURI

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

Special (POCSO) 36/2018

U/S 366-A/376 IPC R/W Section 4 of POCSO Act

State of Assam

-Vs-

Safiqur Rahman.....Accused.

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

For the Accused : Mr. Faruk Aziz, Learned Advocate.

Date of Evidence : 19-01-19: 13-03-19: 06-04-19: 01-08-19.

Date of Argument : 06-08-2019.

Date of Judgment : 08-08-2019.

J U D G M E N T

1. The prosecution case in brief is that on 29-08-18, informant Thembra Boro lodged an FIR with the Officer-in-Charge of Mazbat P.S. alleging that on 15-08-18, his sixteen years old daughter victim-A(name withheld) went missing on her way to the field for celebration of Independence day at Mazbat. On 22-08-18, at about 06 pm, the victim informed over phone that she was forcibly taken away by the accused to his home and he would solemnize marriage with her.

2. On the basis of the FIR, Mazbat PS Case No. 46/18, under Section 366 IPC added Section 376(3) IPC R/W Section 4 of POCSO Act was registered and after completion of investigation Police submitted charge-sheet under Section 366/376(3) IPC R/W Section 4 of POCSO Act against the accused person Safiqur Rahman.
3. The learned Special Judge vide Order dated 06-12-18, 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 366-A/376 IPC, R/W Section 4 of POCSO Act, charges were framed there under and the ingredients of charges under Section 366-A/376 IPC, R/W Section 4 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 08(eight) witnesses:
 - PW1- Hembra Boro.
 - PW2- Victim-A.
 - PW3- Ringu Basumatary.
 - PW4- Somaisri Boro.
 - PW5- Santosh Basumatary.
 - PW6- Efungla Basumatary.
 - PW7- Rahul Raj Daimari.
 - PW8- S.I. Bileswar Kalita.
6. 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.

7. Situated thus, the points for determination in the instant case are set up as follows:-
- (I) Whether the accused person induced Victim-A who is a minor girl under the age of 18 years to go with him to another place with intent that she may be forced or seduced to illicit intercourse with him?
 - (II) Whether the accused person committed rape on Victim-A?
 - (III) Whether the accused person committed penetrative sexual assault upon Victim-A, aged about 15 years?

DISCUSSION, DECISION AND REASON FOR DECISION:

8. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. Faruk Aziz.
9. Learned defence counsel has submitted that the victim who is a major woman voluntarily eloped with the accused and got married with him. In her evidence the victim has specifically stated that she had love affairs with the accused and she voluntarily registered marriage with the accused at Rangiya. Hence, prosecution has failed to prove the charges against the accused.
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 Hembra Boro, informant and father of the victim. In his evidence PW1 had deposed that on 15-08-2018, his daughter victim-A went to Mazbat field for celebrating the Independence Day but thereafter she did not return back home. He made search of her but found no trace of her. After two days, the accused called him over phone and informed him that he registered marriage with his daughter. Thereafter, PW1 lodged the FIR before the Officer In-charge of Mazbat PS. He put thumb impression in the FIR. Later on, Police rescued his daughter from the house of the accused.

The Police had produced his daughter before the Court at Udalguri. After her rescue, she lived in his house for one week and thereafter she was sent to Mirza by CWC. Two days ago, PW1 brought her back home from Mirza. After her rescue, his daughter did not inform him anything about the incident. PW1 also did not ask her anything. In cross-examination, PW1 had stated that the victim went to Mazbat field for celebrating Independence Day along with his younger daughter Munu Boro. PW1 did not know where and in whose house his daughter stayed during the period she was missing. After about five days of occurrence, he lodged the FIR. He did not know the contents of the FIR. The FIR was not read over to him. PW1 was not previously acquainted with the accused. PW1 had denied the suggestion that his daughter Deobari Boro had love affairs with the accused and she eloped with the accused on her own volition and get married with him and that he had deposed falsely today.

12. PW2 is victim-A. In her evidence PW2 had deposed that on 15-08-2018, she went to Industry field of Mazbat to see the celebration of Independence Day. Thereafter, she called the accused over phone and informed him that she was coming to his house. Thereafter, she boarded a train at Mazbat and went to Rangia. From Rangia she went to Paltan Bazar, Guwahati by train. From Guwahati, she came to the house of the accused situated in village Hilaguri of Mangaldoi by hiring a Taxi. She stayed in the house of the accused for twenty days. In the year 2017, she worked in Parlour at Bangalore and at that time she met the accused and developed love affairs with him. After staying twenty days in the house of the accused, she registered marriage with the accused at Rangia. The accused also performed "Nikah" with her in his house. Thereafter, the Police of Mazbat PS rescued her from the house of the accused. She went to the house of the accused and registered marriage with him on his own volition. During her stint in the house of the accused, she called her father over phone. The Police had produced PW2 before the Magistrate at Udalguri. Her statement had been recorded by the Magistrate U/S 164 Cr.P.C. Ext-1

is her statement and Ext-1(1) & Ext-1(2) are the signatures of PW2. From Court PW2 was sent to a shelter home of an NGO namely Nabajiban situated at Borihat, Mirza. She is still living in the said shelter home. Two days ago, his father brought her home in order to produce her before this court for the purpose of adducing evidence. In cross-examination, PW2 had stated that she stayed in Bangalore for about one year in the house of a related sister-in-law of her village. In Bangalore, she procured an AADHAR card. In her AADHAR card her date of birth has been mentioned as 04-02-1999. She executed a marriage agreement with the accused before the Notary, Mangaldoi and in the same marriage agreement also her date of birth was mentioned as 04-02-1999. During her stint with the accused, the accused did not misbehave with her nor used force upon her. At the time of incident, she was aged about more than 18 years.

13. PW3 is Ringu Basumatary. In his evidence PW3 had deposed that on 22-08-2018, the informant, Themra Boro went to the office of ABSU, Mazbat Anchalik and informed them that on 15-08-2018, his daughter went missing after she had gone to Mazbat field for celebrating Independence Day. The informant told that the age of his daughter was sixteen years. Then, they advised Themra Boro to inform the Police. Later on, they came to know from Themra Boro and Police that the victim had been rescued from the house of the accused. In cross-examination, PW3 had stated that he was informed about the incident by the father of the victim girl and the Police. PW3 had denied the suggestion that he did not state before the Police that the informant told them that age of his daughter was sixteen years at the time of the incident.

14. PW4 is Somaisri Boro, mother of the victim girl. In her evidence PW4 had deposed that on 15-08-2018, the incident happened. On that day the accused eloped with her daughter victim-A. On that day her daughter went to Mazbat field to attend the celebration of Independence Day but thereafter she did not return back home. They made search for her but

were unable to trace her out. Later on victim-A informed them over phone that she had eloped with the boy with whom she had love affair. Thereafter her husband lodged the FIR. Later on, her daughter was rescued by the Police from the house of the accused. In cross-examination, PW4 had stated that prior to the incident, her daughter was working in Bangalore. She got acquainted with the accused in Bangalore. She was aged about 19-20 years while she was in Bangalore.

15. PW5 is Santosh Basumatary, worker of Mazbat Anchalik ABSU. In his evidence PW5 had deposed that on 15-08-2018, the occurrence took place. On 22-08-2018, the informant came to their office of ABSU and informed that on 15-08-2018, his daughter eloped with the accused. Then they advised informant to lodge the FIR. Accordingly informant lodged the FIR and later on his daughter was rescued by the Police. Cross-examination of PW5 had been declined by the defence.

16. PW6 is Efungla Basumatary, president of Mazbat Anchalik ABSU. In his evidence PW6 had deposed that on 15-08-2018, the occurrence took place. On 22-08-2018, the informant came to their office of ABSU and informed that on 15-08-2018, his daughter went missing while she had gone to attend the Independence Day celebration at Mazbat. Then they advised the informant to lodge the FIR. Accordingly he lodged the FIR and later on his daughter was rescued by the Police from the house of the accused. In connection with this case, Police had seized one school certificate of victim issued by headmaster Mazbat Girls' High School. Ext-2 is the seizure list and Ext 2(1) is the signature of PW6. M.Ext-1 is the seized school certificate of victim issued by headmaster Mazbat Girls' High School. In cross-examination, PW6 had stated that he had no personal knowledge about the age of the victim. M.Ext-1 School certificate was produced by the parents of the victim. He did not know when M.Ext-1 was issued. PW6 was not acquainted with the signature of the Headmaster who issued the School certificate of the victim.

17. PW7 is Rahul Raj Daimari, vice-president of Mazbat Anchalik ABSU. In his evidence PW7 had deposed that on 15-08-2018, the occurrence took place. On 22-08-2018, the informant came to their office of ABSU and informed that on 15-08-2018, his daughter went missing while she had gone to attend the Independence Day celebration at Mazbat. Then they advised the informant to lodge the FIR. Accordingly he lodged the FIR and later on his daughter was rescued by the Police from Sipajhar. In connection with this case, Police had seized one school certificate of victim issued by headmaster Mazbat Girls' High School. Ext-2 is the seizure list and Ext 2(2) is the signature of PW7.M.Ext-1 is the seized school certificate of victim issued by headmaster Mazbat Girls' High School. Cross-examination of PW7 had been declined by the defence.
18. PW8 is S.I. Billeswar Kalita, Investigating Officer of the case. In his evidence PW8 had deposed that on 29-08-2018, he was posted as 2nd Officer at Mazbat PS. On that day, informant Thembra Boro lodged a written FIR with the Officer In-charge of Mazbat PS. On the basis of the FIR, O/c Dipu Bora registered Mazbat PS case No. 46/18 U/S 366 IPC and entrusted PW8 to conduct preliminary investigation of the case. In course of investigation, he recorded statement of the informant in the PS. On 30-08-2018, PW8 visited the place of occurrence and recorded the statements of other witnesses U/S 161 Cr.P.C. On 06-09-2018, the victim was recovered from the house of the accused. He recorded the statement of the victim. He seized school certificate of the victim from the possession of the parents. He sent the victim for medical examination but the victim and her parents had refused to let the victim undergo medical examination. The victim was also produced before the learned Magistrate for recording statement U/S 164 Cr.P.C. PW8 arrested the accused Safiqur Rahman and forwarded him to learned court. Later on, he prayed before the court for adding section 376(3) IPC and section 4 of POCSO act which was allowed by the learned court. After completion of investigation, PW8 submitted charge-sheet U/S 366 /376(3) IPC r/w section 4 of POCSO act. Ext-3 is the

FIR. The informant put thumb impression in the FIR. Ext-3(1) is the signature of O/c Dipu Bora under the registration note. PW8 is familiar with his signature. Ext-2 is the seizure list of school certificate of victim. Ext-2(3) is the signature of PW8.M. Ext-1 is the school certificate of victim issued by Headmaster of Mazbat Girls High school on 29-08-2018. Ext-4 is the charge-sheet. Ext-4(1) is the signature of PW8. In cross-examination, PW8 had stated that the FIR was lodged after about 14 days of the incident. The seized school certificate of the victim was produced by the informant. He did not verify the authenticity of the seized school certificate with the issuing authority. PW8 had denied the suggestion that he did not visit the place of occurrence and that he did not investigate the case properly as he had not prepared the sketch map of the place of occurrence.

19. On appraisalment of the evidence of PW2, the victim, it appears that she met the accused at Bangalore in the year 2017 and developed love affairs with him. On the date of occurrence she on her own volition went with the accused and later on solemnized marriage with him. Thus from the evidence of the victim girl it is clear that the accused did not use force or induce the victim to go with him and to marry him. The father of the victim also did not make any allegation that the accused forcibly kidnapped the daughter. According to him the victim did not inform him anything about the incident. The mother of the victim girl has also been examined as PW4. She also did not make any allegation against the accused. With regard to the age of the victim it is found that in cross-examination the victim had revealed that at the time of incident she was aged about more than eighteen years. She also admitted that in her Aadhar card her date of birth has been mentioned as 04-02-1999. According to the mother of the victim, the victim was aged about nineteen to twenty years while she was in Bangalore. Though a school certificate of the victim has been exhibited as M.Ext.-1 but the I/O in his cross-examination revealed that he did not verify the authenticity of the said certificate with the issuing authority. The said certificate was produced to the I/O by the parents of the victim. It is

found that M.Ext.-1 is purportedly issued by Head Master of Mazbat Girls School but prosecution has failed to prove the said certificate by examining the issuing authority. In such a case this Court is reluctant to accept the said school certificate exhibited in the case to be genuine and authentic document in absence of examination of the issuing authority in view of the fact that there is every possibility of manipulation of such school certificate which was not issued by Board of Secondary Education, Assam. Moreover, ocular evidence of the victim and her mother contradicted, the date of birth of the victim is 31-12-2002 as shown in M.Ext.-1. As per their evidence the victim is more than eighteen years on the date of occurrence. Therefore, from the evidence on record it is found that victim was a major woman at the time of incident and she voluntarily eloped with the accused. Hence, prosecution has failed to prove the charges under Section 366-A/376 IPC, R/W Section 4 of POCSO Act.

20. 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 4 of POCSO Act against the accused person beyond all reasonable doubt.
21. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

22. In the result, the accused Safiqur Rahman is found not guilty under Section 366-A/376 IPC, R/W Section 4 of POCSO Act and acquitted of charges under Section 366-A/376 IPC, R/W Section 4 of POCSO Act and set with liberty forthwith.
23. Bail bond executed by the accused Safiqur Rahman and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

24. Judgment is signed, delivered and pronounced in the open court today the 08th 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) 36/18

APPENDIX

(A) Prosecution Exhibits :

Ext.-1: Statement of the victim-A U/S 164 Cr.P.C.

Ext.-2: Seizure List.

Ext.-3: Charge-sheet.

Ext.-4: FIR.

Ext.-5: Sketch map.

(B) Materials Exhibits :

M.Ext.-1: School certificate of the victim.

(C) Defence Exhibits : Nil.

(D) Exhibits produced by witness: Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Hembra Boro.

PW2- Victim-A.

PW3- Ringu Basumatary.

PW4- Somaisri Boro.

PW5- Santosh Basumatary.

PW6- Efungla Basumatary.

PW7- Rahul Raj Daimari.

PW8- S.I. Bileswar Kalita.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

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