

IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.12/2019
(U/S : 366 IPC/ 6 of POCSO Act)

State
Versus
Hareswar Rabha,
S/O Sri Kabiram Rabha,
Vill- Rangagaon,
PS-Khairabari, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S.,
Special Judge,
Udalguri.

APPERANCE:

For the Prosecution : Sri A. Basumatar, P.P.,Udalguri

A N D

For the accused : Mr. M.P.Rabha, Advocate.

Evidence recorded on : 16.8.2019.

Argument heard on : 16.8.2019.

Judgment delivered on: 16.8.2019.

J U D G M E N T

1. The prosecution case, in brief, is that on 8.5.2018 the informant Prabin Choudhury lodged an FIR with the Officer-In-Charge, of Khairabari PS, alleging, inter-alia, that on 6.5.2018 at about 10/11 AM while he was not present at his house the accused Hareswar Rabha induced his only minor daughter (real name is withheld, henceforth referred as to the victim) to go with him. He made search of her whereabouts but she remained traceless.

2. Pursuant to the FIR the O/C, Khairabari PS registered a case vide Khairabari Police Station case No.15/2018 U/S 366 IPC and investigation of the

case was launched accordingly. On completion of the investigation police laid charge-sheet against the accused U/S 366 IPC/6 of POCSO Act to face trial.

3. On receipt of the charge sheet cognizance of the offences were taken and process was issued to ensure the presence of the accused for trial. In due course of appearance the accused was furnished with the copies of documents supplied U/S 173 Cr.P.C.

4. Whereupon, on perusal of the entire materials on record a prima-facie case was made out to frame charges against the accused U/S 366 IPC/ 6 of POCSO Act and, accordingly, charges thereunder were framed and the same on being read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Situated thus, the points for determination in the present case are set up and framed as:-

(i) Whether the accused on 6.5.2018 at about 10/11 AM at Bejbhagawati under Khairabari PS kidnapped the victim with intent that she might be compelled or knowing it to be likely that she would be compelled to marry him against her will or she might be forced or seduced to illicit intercourse with him and thereby committed an offence punishable under Section 366 IPC, and within my cognizance?

(ii) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 16 years, and thereby committed an offence punishable under Section 6 of POCSO Act, and within my cognizance?

6. In order to buttress the case prosecution tendered evidence of two prime witnesses, who are the informant and the victim of the case, as PW1 and PW2 respectively. It is worthwhile to mention at this stage that after examination of the said prime witnesses the learned P.P. for the State

submitted a petition for closure of the prosecution evidence as neither the informant nor the victim could adduce incriminating evidence against the accused. Further the examination of remaining witnesses would be a futile exercise without any improvement to the prosecution case.

7. On the basis of the said petition, I heard learned P.P. for the State and perused the materials on record. Having found no figment of implicating evidence in the testimony of the informant as well as the victim having any intrinsic worth to bring home the guilt of the accused, the petition for the learned P.P. is allowed and, accordingly, prosecution evidence was closed.

8. Due to lack of any incriminating evidence the examination of the accused U/S 313 Cr.P.C. is dispensed with.

9. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREFOR:

10. PW1, Prabin Chudhury is the first informant. He has deposed that at the time of occurrence the age of his daughter was 18 years. At the material time one day his daughter voluntarily eloped with the accused without informing them. When he could not trace out his daughter he lodged an FIR with the police which is marked as Ext.1, wherein Ext.1(1) is his signature. Subsequently, he came to know that it was his daughter who eloped with the accused due to having love affair since before the incident. After the incident his daughter was given in marriage with the accused and they are living as husband and wife. In the meantime, they are also blessed with a son who is six months old now. He has no grievance against the accused. In cross-examination, he has disclosed that his daughter is staying with the accused as his wife peacefully and she also gave birth to a male baby.

11. The evidence of the victim (PW2) also does not contain any speck of incriminating evidence to establish the substratum of the prosecution case. Like the informant (PW1) she has also given a go bye to the prosecution case. According to her, she eloped with the accused on her own volition due to love affairs with him. At the material time she was 18 years old. When she eloped she did not inform her parents and, therefore, her father lodged the FIR. After elopement she went to Goa and the accused solemnised her marriage in a Temple. After returning from Goa to the conjugal home of the accused the accused was arrested and her statement was also got recorded before Magistrate U/S 164 Cr.P.C. vide Ext. 2, wherein Ext. 2(1) is her signature. She has also stressed in her cross-examination that the accused is her husband and he did not kidnap her. She rather eloped with the accused due to love affair and entered into marriage with him which was solemnised as per Hindu rites.

12. On appreciation of the aforesaid evidence of prime witnesses of the case, it is easily discernable that none of these witnesses has adduced any incriminating evidence to establish the complicity of the accused in respect of the charges levelled against him. They are now living as a married couple after the incident and they are blessed with a male baby who is 6 months old now. The statement of the victim, Ext.2 also does not contain any incriminating material as she has categorically revealed in her statement before the Magistrate that she eloped with the accused voluntarily. The birth certificate of the victim (PW2) also discloses her majority at the time of the incident.

13. Situated thus, it can be safely held that there is no legally admissible evidence to prove the guilt of the accused and, therefore, the accused is entitled to acquittal.

14. In the result, I am constrained to hold that the accused Hareswar Rabha is not guilty U/S 366 IPC/ 6 of the POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.

15. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 16th day of August,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia)
Special Judge,
Udalguri.

Sessions Judge,
Udalguri.

APPENDIX:

A)Prosecution witnesses:

- i) PW1 Prabin Chudhury
- ii)PW2 Gitanjali Choudhury

B)Defence witness: Nil.

C)Exhibits:

- i)Ext.1 FIR.
- ii)Ext.3 Statement of the victim U/S 164 Cr.P.C.

Dictated and corrected by me.

Special Judge,
Udalguri