

IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.16/2019
(U/S :366 IPC/ 6 of POCSO Act)

State
Versus
Rajesh Chouhan,
S/O Sri Manu Chouhan,
Vill- Bholabari,
PS-Kalaigaon, 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 : Sri D. K. Boro, Advocate.

Evidence recorded on : 17.8.2019.

Argument heard on : 17.8.2019.

Judgment delivered on: 17.8.2019.

J U D G M E N T

1. Briefly stated, the prosecution case is that on 12.3.2018 the informant Birendra Prasad Gupta lodged an FIR with the Officer-In-Charge, Tangla PS alleging, inter-alia, that on 11.3.2018 at about 3.30 PM his minor daughter aged about 16 years (real name is withheld, henceforth referred as to the victim) found missing from his home. On being searched his daughter whereabouts he came to know that that his daughter went to the house of the accused Rajesh Chouhan situated at Bholabari and thereby he has sought help from police.

2. On the basis of the FIR, the Officer-In-Charge of Tangla PS registered a case vide Tangla Police Station case No.51/2018 U/S 366 IPC to investigate

into it. On conclusion of the investigation the police laid the charge-sheet against the accused Rajesh Chouhan U/S 366 IPC/ 6 of POCSO Act appeared to have been committed by him.

3. On receipt of the charge sheet court process was issued to ensure the presence of the accused. On appearance, the accused was furnished the copies of documents supplied U/S 173 Cr.P.C.

4. On careful analysis of the materials on record a prima-facie case was made out to frame charge against the accused Rajesh Chouhan U/S 366 IPC/ 6 of POCSO Act. Whereupon formal charges under the said Sections of law were framed against the accused and the same on being read over and explained to him to which he pleaded not guilty and claimed to be tried.

5. In order to bring home the charges, the prosecution examined three vital witnesses viz the informant, victim and the medical officer of the case.

6. After examining those witnesses learned P.P. for the State submitted a petition to close the prosecution case as they could not disclose any implicating evidence against the accused and examination of the remaining witnesses would be a futile exercise and, therefore, prayed to close the prosecution evidence.

7. In the context of the above petition of the learned P.P. for the State, I also carefully gone through the entire materials on the record. Having found that the vital witness victim failed to adduce incriminating evidence and she also refused to undergo medical treatment before the doctor and, therefore, the petition was allowed and the prosecution case stood closed as further proceeding would not improve the prosecution case. Situated thus, the examination of the accused U/S 313 Cr.P.C. was dispensed with due to lack of incriminating materials to put before him seeking his answer.

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

(1) Whether the accused on 11.3.2018 at about 3.30 PM at Ward No.2, Pujakhala, Tangla under Tangla PS. kidnapped the victim, with 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 with the accused as alleged U/S 366 IPC?

(2) Whether the accused on the same day, time and place committed aggravated penetrative sexual assault upon the victim, aged about 16 years as alleged U/S 6 of POCSO Act?

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 THEREOF:

10. PW1, Birendra Prasad Gupta is the first informant of the case. He has proved the FIR as Ext.1 and Ext.1(1) is his signature. It is his evidence that when the occurrence took place on 11.3.2018 he was not available at his home. On that day his victim daughter went out of the house without informing anyone and remained traceless. Accordingly he lodged the FIR Ext.1 and after 45 days his daughter returned home. On being asked his victim daughter told him that she voluntarily eloped with the accused. This is also his evidence in cross-examination that he did not know how his daughter eloped with the accused but he only came to know after elopement of his daughter that she had love affair with the accused.

11. In the same tune the victim (PW2) adduced her evidence disclosing unequivocally that on the day of occurrence she eloped with the accused with whom she had love affairs since before the incident and she was 18 years old at that time. She has rather empathically stated that the accused did not compel her to go with him and her parents knew about her love affair with the

accused before her elopement for which she was used to beat by her parents off and on. Her statement marked as Ext. 3 on scrutiny also reveals that she eloped with the accused on her own volition and she was a major girl at the time of occurrence.

12. Lastly, the testimony of the doctor (PW3) also discloses no iota of medical evidence in respect of the offences in which the accused has been charged. In a clear manner he has stated that though on 5.6.2018 the victim was sent for medical examination she refused to undergo medical examination except yielding herself to radiological examination and as per radiological examination her age was approximately 20-22 years.

13. In view of the foregoing discussion of the evidence on record, it is quiet patent that there is no vestige of incriminating evidence to support the charges levelled against the accused as the victim being a major girl eloped with the accused on her own volition. That being the evidence, none of the charges levelled against the accused has been proved.

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

Given under my hand and seal of this Court this 17th day of August, 2019.

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

Sessions Judge,
Udalguri.

(P.Saikia)
Special Judge,
Udalguri.

APPENDIX:

A) Prosecution witnesses:

i) PW1 Birendra Prasad Gupta
ii) PW2 Neha Gupta

iii)PW3 Dr. Bhadra kt. Sarma

B)Defence witness: Nil.

C)Exhibits:

- i)Ext.1 FIR.
- ii)Ext.2 Statement of the victim U/S 164 Cr.P.C.
- iii)Ext.3 Medical report.

Dictated and corrected by me.

Special Judge,
Udalguri