

IN THE SPECIAL COURT :::::::::::::::::::: BAKSA AT MUSHALPUR

Present : Shri C. Das,
Judge, Special Court,
Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.20/2018

U/S 4 OF POCSO ACT r/w SECTION 366/34 IPC.

State

-versus-

1. Sri Narayan Das,
2. Sri Khagen Das,
3. Sri Purnananda Das

.... Accused

Appearance :

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. P. Das, R. Barman, Advocates

Date of recording evidence : 1/11/18

Date of argument : 15/11/18

Date of judgment : 29/11/18

JUDGMENT

1. The case of the prosecution briefly, is that on 24/11/14 the complainant Smti. Junali Patgiri lodged a FIR before the Officer-in-charge of Barbari police station, alleging inter-alia that on 23/11/14 at about 4 pm., her 17 years old daughter (name is withheld) was missing after going out to the house of a friend. According to her, her daughter was taken away by the accused Narayan Das and kept in his house.

2. The police accordingly, registered the Barbari PS. Case No.50/14 and started the investigation. During the investigation, the I/O visited the place of occurrence, examined the witnesses and recovered the victim girl from the house of the accused Narayan Das. The I/O could not arrest the accused Narayan Das since

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the accused Khagen Das and Purnananda Das resisted the police and helped the accused Narayan Das to flee away from the village. After recovery, the I/O sent the victim girl for her medical examination and for recording her statement u/s 164 CrPC., by a Magistrate. At the end of the investigation, the I/O having found sufficient materials, submitted the charge-sheet against the accused persons to stand trial in the court.

3. The accused persons when appeared in the court, were furnished with the relevant copy of the case. After hearing both the sides and on perusal of the material on record, the charge u/s 4 of POCSO Act was framed against the accused Narayan Das while the charge u/s 366/34 IPC was framed against all the accused persons. The charge so framed, was read over and explained to the accused persons who pleaded not guilty and claimed to be tried.

4. The prosecution during the trial, examined as many as, 2(two) witnesses to support its case. Learned Public Prosecutor declined to examine further prosecution witnesses and as such, the prosecution was closed. In the statement recorded u/s 313 CrPC., the accused persons denied their involvement in the circumstances appeared in the evidence against them. The accused persons however, declined to examine any witness in their defence. The argument of the parties was heard at length.

POINTS FOR DETERMINATION :

5. Whether on 23/11/14 at about 4 pm., at Barimukha under Barbari police station, the accused persons in furtherance of common intention, induced the victim, a minor girl under the age of 18 years to go from her home with intent that she may be seduced or forced to illicit intercourse with another person ;

6. Whether on same day, time and place as above, the accused Narayan Das committed penetrative sexual assault upon the victim girl ;

DECISION AND REASON THEREFORE :

7. Learned Public Prosecutor at the outset of argument, submitted that the evidence of the victim disclosed sufficient incriminating circumstances which leads to believe that the accused persons are involved in kidnapping the

victim from the lawful custody of her natural guardian. Since the victim was admittedly recovered from the house of the accused persons, an adverse presumption can be drawn against them *u/s 114 of Evidence Act* that it was none other than the accused persons who with their common intention, committed the crime of kidnapping of minor girl to fulfill their intention to force her to illicit intercourse with other persons. Apart from that the evidence on record shows clearly that the accused committed the offence of penetrative sexual assault upon the minor victim girl and as such, the accused all are liable for punishment as per provisions of law.

8. Countering the above submissions placed by learned Public Prosecutor, learned counsel appearing for the accused persons vehemently submitted that there is no material in the evidence of the prosecution witnesses to accept that the accused persons committed the offence as alleged by the prosecution. He further submitted that the principle of criminal jurisprudence demands that the prosecution must prove its case against the accused person beyond all shadow of doubt in the light of *section 3 of Evidence Act*. Unless, the prosecution placed such standard of proof in the trial by adducing sufficient reliable and believable evidence, the accused cannot be held for committing the alleged crime. But in the instant case, the evidence of the victim girl itself shows that the prosecution could not prove its case against the accused persons beyond any doubt, he maintained. At the end, learned counsel for the accused persons urged to acquit them from the charge of the offence.

9. Upon hearing the parties, it is pertinent to go through the evidence on record. For convenience, the evidence of the prosecution witnesses is reproduced herein. The prosecution examined the victim girl as PW1. She deposed in the court that on the fateful day she eloped with the accused Narayan Das. She had love affairs with the accused Narayan Das. Hence, her mother/ complainant searched for her but as she was untraced, her mother filed the ejarah before the police. Accordingly, the police recovered her from the house of the accused Khagen Das who is the father of the accused Narayan Das. The police thereafter, sent her for medical examination and for recording her statement in the court vide Ext.1 with her signatures. Her mother brought her back to home. But later on, she again, went to the house of the accused Narayan Das. At present, she resides in the house of the accused Narayan Das as his wife. A girl child is also, born to her who is 3 years old now.

10. In the cross-examination, PW1 stated that she was 18 years of age at the time of occurrence. Since her mother did not want her marriage with the accused Narayan Das, she went voluntarily to the house of the accused persons. Her mother filed the case since she went against the will of her mother. Her statement in Ext.1 was tutored by her mother. Apparently, PW1 does not lend support to the prosecution case.

11. It is the evidence of PW2 Smti. Jonali Patgiri who is the mother of the victim girl as well as, the complainant of the case, that she filed the ejahar vide Ext.2 with her signature. According to her, on the fateful day at about 4 pm., the victim girl was missing from her house. After her inquiry, she came to know that the victim girl was in the house of the accused Narayan Das. So, she went to the house of the accused Narayan Das but could not trace out the victim girl along with the accused Narayan Das. Hence, she filed the ejahar before the police. On next day, the police recovered the victim girl from the house of the accused persons. The police sent the victim girl for medical examination and recorded her statement in the court. Subsequently, the victim was handed over to her and she brought the victim to her home. After 9 days, the victim girl again went to the house of the accused persons. But she did not file any case. At present, the victim is resided in the house of the accused persons and has a girl child. The victim was 18 years old at the time of occurrence. She submitted the school certificate of the victim before the police.

12. In the cross-examination, PW2 disclosed that out of fear and on advised by local villagers, she filed the case. Since the victim had love affairs with the accused Narayan Das, the victim went on her own will. She filed the ejahar before talking to the victim girl. When she came to know about the real fact of love affairs between the victim and the accused Narayan Das, she did not proceed further against them. She tutored the victim girl on advice of other persons to speak against the accused persons in Ext.1. At present, the victim is leading peaceful conjugal life with the accused Narayan Das. There is no relation between the accused Purnananda Das with other accused persons.

13. After going through the evidence of the prosecution witnesses, it appears that there is no dispute that the victim girl had love affairs with the accused Narayan Das prior to the occurrence. But it was perhaps, not known to the complainant initially. The complainant is the mother of the victim girl. Hence, being mother, the complainant is the better person to disclose with correct age of the

victim though the victim claimed that she was 18 years of age at the time of occurrence. As far as, the age of the victim is concerned, PW2 stated that the victim was 18 years of age at the time of occurrence. Hence, PW2 corroborates the version of the victim girl as regards to her age. There is no other evidence to find out the correct age of the victim. Therefore, the option is to accept the evidence of PW2 who is the mother of the victim since the mother knows the age of her daughter properly. In the light evidence available on record, it appears that the victim was 18 years old girl at the time of occurrence. Hence, the case of the prosecution is hit by section 2(d) of POCSO Act and as such, the victim was not a child within the meaning of the said Act. In other words, the victim girl was a major girl at the time of occurrence. Therefore, the case of the prosecution does not attract the offence u/s 4 of POCSO Act., against the accused Narayan Das.

14. As regards to offence under section 366 of IPC., is concerned, it appears from the evidence of PW2 that the victim was recovered from the house of the accused Narayan Das. This means that the accused Narayan Das and his father; Khagen Das were involved in kidnapping or abducting the victim girl from her house or custody of PW2 who is the natural guardian and mother of the victim. There is no evidence to implicate the accused Purnananda Das who is admittedly not related to other two accused persons.

15. The essential requirements u/s 366 IPC., are for the first part of the section that 1) *The accused kidnapped or abducted a woman ;*
 2) *The accused intended or knew it likely that –*
 a) *the woman abducted or kidnapped would be compelled to marry any person against her own will, or*
 b) *she would be forced or seduced to illicit intercourse. For the second part of section –*
 1) *Accused induced any woman to go from certain place ;*
 2) *Accused did it by criminally intimidating her ;*
 3) *He did so by abusing his authority ; or*
 4) *He did so by any method of compulsion ;*
 5) *Accused intended or knew it likely that such woman would be forced or seduced to illicit intercourse.*

16. Thus, the above offence requires its ingredients in two parts which is required to be fulfilled by the prosecution against the accused. Unless, those ingredients are not fulfilled, the accused cannot be implicated in the said offence. In the instant case, if the evidence of the complainant is observed, her testimony

disclosed that the accused Narayan Das eloped her daughter and kept in his house but on her visit, she did not find neither the victim girl nor the accused Narayan Das. Hence, she sought for police help to recover the victim girl. PW2 the complainant did not implicate other two accused in the occurrence. Hence the offence of kidnapping or abduction cannot be attracted against them. As far as, the accused Narayan Das is concerned, the evidence of PW2 does not disclose anything regarding kidnapping or abduction of PW1. However, if her testimony that the accused Narayan Das kidnapped PW2 and kept in his house, is accepted, it does not inspire confidence since she could not find out the victim in the house of the accused Narayan Das nor him. But on the basis of the fact that the victim was recovered from the house of the accused persons by the police, discloses that the victim went to the house of the accused persons or the accused Narayan Das kidnapped the victim. But PW2/ victim admitted that she went to the house of the accused persons out of her own will since she was in love with the accused Narayan Das prior to the occurrence. The evidence of PW1 also, does not show that she was kidnapped or abducted by the accused persons. PW1 apparently, is a major person at the time of occurrence. Therefore, she can exercise her own will and to decide on her own to go to the house of the accused if she intends to. Thus, the fact of recovery of PW1 from the house of the accused persons cannot be sufficient enough to draw an adverse presumption u/s 114 of Evidence Act against the accused persons that PW1 was kidnapped or abducted by the accused persons. Hence, the evidence on record does not satisfy the first part of section 366 IPC.

17. As regards to second part of the offence, it appears that though PW2 did not state that she was married by the accused Narayan Das, her testimony discloses that she gave birth to a child who is 3 years old. The evidence of PW1 and 2 does not show that the accused had any intention to forced or seduced the victim to involve in any illicit intercourse with another person neither it discloses that the accused Narayan Das fraudulently induced PW1 to go out from her home. If PW1 is bestowed with a child while she is residing in the house of the accused Narayan Das as his wife, it means that she had intercourse lawfully with the accused Narayan Das and not with another person. It is not found in the evidence of PW1 that she was forced or intimidated by the accused persons to leave her home but contrarily, it shows that PW1 went out of her home out of her love with the accused Narayan Das. Hence, it is found from the evidence on record that the second part of section is also, not fulfilled. In the light of above, it is held that the evidence of the prosecution witnesses is not sufficient enough to constitute the offence u/s 366/34 IPC to implicate the accused persons. Hence, there is doubt if the accused persons



are involved in the crime as alleged by the prosecution.

18. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt. Accordingly, the accused persons are held not guilty u/s 366/34 IPC r/w section 4 of POCSO Act and they are acquitted and set at liberty. However, the bail bonds of the accused persons shall remain in force u/s 437-A CrPC. The victim girl is entitled to get compensation and as such, this court recommends for payment monitory compensation to her by the DLSA, Baksa. Inform accordingly. Forward a copy of judgment to the District Magistrate, Baksa, Mushalpur.

19. Given under the hand and seal of this court on this 29th day of November 2018.

Dictated and corrected by :



C. Das,
Judge, Special Court,
Baksa, Mushalpur



Judge, Special Court,
Baksa, Mushalpur

Typed by :

P. Deka, Com. Typist

ANNEXURE :

List of prosecution witness :


- PW1 ... the victim girl (name withheld)
- PW2 ... Smti Jonali Patgiri ... informant

List of defence witness :

Nil

List of documents exhibited :

- Ext.1 ... statement of the victim girl
- Ext.2 ... the ejahar


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