IN THE COURT OF THE SPECIAL JUDGE :::::::::: KOKRAJHAR

Special Case No.1/2017

State of Assam

Vs

Md Yasin Paramanik …. Accused

Present: Sri P.K Das, AJS,
Special Judge,
Kokrajhar

Ld. advocate for the State : Mr N.Roy, (P.P.)

Ld. advocate for the accused: Mr S. Pahariya

Date of recording evidence : 23.2.17, 23.3.17, 23.5.17 and 19.6.17

Date of argument : 05.8.2017 and 19.8.2017

Date of judgment : 30.8.2017

J U D G M E N T

1. The story of the prosecution case is that one Mosstt Alekjan Bibi lodged an FIR against the accused Yasin Paramanik for inducing her daughter Toshiran Begum to go with him for the purpose of sexual intercourse and also penetrative sexual assault on her by the accused Yasin Paramanik. Accordingly, a case was registered vide Kokrajhar P.S. case No.534/16 under sections 366A/511/323 IPC, R.W. Section 4 POCSO Act. Accordingly, the case was entrusted to the I.O. Majen Barman and others for investigation. During the time of investigation the I.O. sent the victim to the Medical Officer for her examination. The victim was sent for recording the statement to the Magistrate. After completion of investigation the I. O. filed the charge sheet

under sections 366A/511/323 IPC, R.W. Section 4 POCSO Act for having materials against the accused person. After hearing both sides, I have framed the charges under sections 366A/511 IPC, R.W. Section 4 POCSO Act against the accused person. I read over and explained the charges to the accused to which he pleaded not guilty and claimed to be tried. The prosecution side examined their witnesses and the defence side examined none. The defence side submitted that they will not adduce defence evidence. At the same time the statement of the accused was recorded and his plea is total denial. Then I have heard argument of both sides.

2. **Points for determination**:

(1) Whether the accused induced Toshiran Begum to go with him for the purpose of seducing her for committing sexual offence on her ?

(2) Whether the accused person committed penetrative sexual assault on her as alleged ?

3. Prosecution side examined PW1 Toshiran Begum, PW2 Alekjan Bibi, PW3 Idrish Ali Sk., PW4 Dr Sushma Brahma and PW5 ASI Angaraj Chetry. The other side examined none.

4. **Decision and reasons for decision:**

I will discuss the points for decision in the light of evidence of the prosecution side. From evidence of PW1 Toshiran Begum I find her mother filed the case out of anger. She left with the accused at her own will. There was no inducement on her to take her by the accused. As per PW1 Toshiran Begum accused did not take her by applying force. In her cross-examination she further stated that she got married with one Jumur Ali but Jumur divorced her after one month. She returned home. Thereafter, again she left with Yasin. She was 18 years at the time of leaving with Yasin. She

also said that she gave statement to the court on tutoring her by her mother and others. Actually she did not say to the Magistrate properly on taking her by Yasin. That was not her proper version.

5. PW2 Alekjan Bibi also said that she filed the case out of misunderstanding on the accused. Accused committed no offence. Accused is innocent person. Her daughter was 20 years at the time of incident. Her daughter left with the accused at her own will and choice.

6. So from evidence of PW1 Toshiran Begum and PW2 Alekjan Bibi I find actually the victim Toshiran Begum left with the accused at her own will. Mother has also confirms the fact I find. There was no inducement and threatening on taking her by the accused.

7. PW3 Idrish Ali also said that he heard leaving Toshiran Begum with the accused Yasin. It is a fact that Toshiran Begum married with Jumur. However, their marriage dissolved by divorce. So there was no inducement at the time of the incident on Toshiran and she left with the accused Yasin at her will.

8. PW4 Dr Sushma Brahma also said that she examined Toshiran Begum on being produced before her by the police. She also found axuillary hair well developed. No injury found on her body . No mark of violence on the private parts of the victim. Smear does not show any spermatozoa. Her age is above 16 years but below 18 years. She was not pregnant. No mark of injury found on her body and private part. She also opines that the victim was habituated to sexual intercourse. Further in her cross-examination she does not ascertain whether the victim was raped or not by the accused and as per her Radiologist cannot give exact age of the victim she opined. This indicates she may be of above 18 years at the time of incident. That possibility can not be ruled out.

9. So considering the entire evidence I find the age of the victim was 18 years. From their evidence I can presume the age of the victim as 18 years and above. There is nothing to doubt on this point. The victim left with the accused due to love affairs. The mother of the victim also said so. The mother also said that she filed this case out of misunderstanding. From the cross-examination I find there is allegation that the accused induced the victim of the age of 16 years to go with accused but the victim refused to say on inducing her by the accused to go with her. Accused took her the allegation and that the statement is also recorded. Thereafter, the I.O. filed the charge sheet also against the accused.

10. The learned Public Prosecutor has submitted that the case has been proved against the accused Yasin Paramanik. Therefore, the accused may be punished in the terms of law. The age of the victim is not ascertained it is submitted . From evidence of the victim PW1 Toshiran Begum I find she is major and the case was filed out of misunderstanding by the PW2. She left with the accused at her own will. She was divorced by Jumur Ali at that time. She lived with the accused after their marriage.

11. PW5 ASI Angaraj Chetry also said that on 16.9.16 he was the in-charge of Balagaon O.P. He visited the place of occurrence on getting FIR. He recorded the statement of the victim. On his transfer he handed over the case diary to the Office-in-charge of Kokrajhar P.S.

12. Considering the situation I find that actually there is nothing and no element of using force in the evidence of the so called victim. At the same time penetrative sexual assault by accused person is also not proved.

13. Considering their submissions of both sides I come to the conclusion on the basis of evidence on record that PW1 Toshiran Begum and PW2 Alekjan Bibi. I do not find any reason actually to hold the accused had

committed offences as alleged under section 366A/511 IPC, R.W. Section 4 POCSO Act against the accused. Under the circumstances I hold that the prosecution side has failed to prove the case against the accused Yasin Paramanik the offence under section 366A/511 IPC, R.W. section 4 POCSO Act against the accused Yasin Paramanik.

O R D E R

14. Considering the foregoing discussion of evidence on record and after hearing both sides, I hold that the prosecution side has failed to prove the case against the accused person. So I acquit the accused Yasin Paramanik from the charges under sections 366A/511 IPC, R.W. section 4 POCSO Act. I cancel the bail bond of the accused person. I set him at liberty forthwith.

Given under my hand and seal of this Court on this 30th day of August/2017.

Directed & Corrected by me

Special Judge,
Kokrajhar

Special Judge,
Kokrajhar

Appendix

The prosecution witnesses are:

1) Musstt Toshiran Begum…. PW1
2) MosstAlekjan Bibi …..PW2
3) Md Idrish Ali PW3
4) Dr Sushma Brahma PW4
5) ASI Angaraj Chetry ...PW5

The Court Witness : Nil

The exhibited documents:-

1) Ext.1 ..... Medical report
2) Ext.2 …... Charge sheet

The Defence witness and exhibit : Nil.

Special Judge,
Kokrajhar