IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 02 of 2018

(Under Section 366(A) of the IPC read with section u/s 18 of the POCSO Act, arising out of G.R. Case No. 141/18)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor State of Assam

-vs-

Accused :- Sri Biren Borah,

Son of Late Khudeswar Borah, Resident of Missamari Police Station - Missamari

Dist:- Sonitpur, Assam

Date of framing Charge :- 23/02/2018

Date of Recording Evidence :- 08/03/2018 and 09/03/2018

Date of examination of accused u/s 31:- 09/03/2018

Cr.P.C.

Date of Argument :- 09/03/2018

Date of Judgment :- 09/03/2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. H.P. Sedai, Advocate.

JUDGMENT

- 1. In this case accused Sri Biren Borah is put for trial for allegation of charge under Section 366(A) of the IPC read with section 18 of the POCSO Act, 2012.
- 2. The prosecution case according to the FIR in brief is that on or about 5 p.m. of 10-01-2018 while the victim Miss X, the minor girl under the custody of informant, along with the daughter of the informant went to informant's working place in 180 Military Hospital, at about 7 p.m., the said victim was missing from her working place. Informant and her daughter vigorously searched her but they could not trace out the whereabouts of the said girl. At about 8 p.m. the police of Missamari Police station dropped the said girl in their house. The police also recovered the accused. The informant came to know from the said girl that the accused has forcefully took her in a scooty with intent to do bad thi9ngs towards Gabharu river. The informant also came to know that the local people handed over the accused and victim to police. Hence, this prosecution case.
- 3. The ejahar was filed by the informant Smti Tiluttoma Baruah before the O/C of Missamari police station on 10-01-2018. On receipt the ejahar, the Officer-In-Charge of Missamari Police Station registered the case vide Missamari P.S. Case No. 08/18 u/s 366(A) of IPC read with section 18 of POCSO Act. After completion of usual investigation, the O/C Missamari Police Station filed charge sheet u/s 366(A) of IPC read with section 18 of POCSO Act against the accused Sri Biren Borah.
- **4.** On being appeared the accused before this Court, after hearing both parties, I framed charge u/s 366(A) of IPC read with section 18 of POCSO Act, against the accused Sri Biren Borah and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.

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- **5.** To substantiate the case, prosecution has examined as many as 4(four) witnesses which includes the complainant, alleged victim and most material witness i.e. the daughter of the complainant. After examination of the aforesaid witnesses, learned counsel for the accused submitted to close the evidence as to the statement of the victim no way supported the prosecution case. Learned Special Public Prosecutor also conceded. From the statement of the victim, complainant and other witnesses, I think that prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed. Accused was examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegation and evidence and declined to give defence evidence.
- **6.** I have heard arguments put forwarded by learned advocate of both the parties.
- **7.** The point for decision in this case is that -
 - (1) "Whether on or about 67 p.m. of 10-01-2018, at 180 Military Hospital under Missamari Police station, the accused induced the victim, a minor girl under the age of 18 years, to go from the hospital or to do any act or acts with the intent that the said victim may be forced(seduced) to illicit intercourse with the accused and thereby committed an offence punishable under section 366(A) of the IPC?
 - (2) "Whether on the same, date time and place the accused attempted to commit any offence punishable under the POCSO Act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence, on Miss X (14 years of age) and thereby committed an offence punishable U/S 18 of the POSCO Act?

Reasons, Decisions and reason for decision.

8. To arrive at the judicial decision, let me appreciate the evidence on record.

9. PW 1 Smti Tiluttoma Baruah, the complainant, stated that the incident took place on 10-01-2018 at evening time. At the relevant she was on duty at Army Hospital at Missamari. During that time her daughter Rinki Baruah along with Miss X came to the hospital to meet her at about 7 PM. Rinki at first went to wash room and other girl Miss X remained in the outside of the hospital. At that time said girl was about 14 years. About 7.15 PM she along with her daughter Rinki went out from hospital, but, they did not find said girl at the outside of the hospital. Then she informed the neighbor that they could find out the girl and then she along with neighbor searching the said girl. At that time, her younger daughter Momi informed her over phone that police took the girl to their house and she also asked her that police informed her to visit the PS immediately. Accordingly, she went to the Missamari PS. On being asked, Moina told her pointing to Biren Borah that said Biren Borah forcefully took her in his Scooty towards the side of Gabharu River through the jungle where she jumped out from the Scooty. When the said girl returned from the said place, she meet one army personnel at TCP point. Then she filed the written ejahar. Ext.1 is the said ejahar and Ext.1(1) is her signature. Then police sent Moina for medical examination and thereafter took her to the Court for recording her statement under Section 164 CrPC and then took her in her custody.

In cross-examination, she admitted that said girl came to her house on 20-08-2017. She knows the victim/girl for long time. She also belongs to Sibsagar and she also belongs to Sibsagar i.e. why she kept her as her own daughter. They supposed to get her admission in the month of January, but, the said incident took place and therefore, she could not get her admission.

10. PW 2, Smti Rinki Baruah, stated that the incident took place on 10-01-2018 at about 7/7.30 PM. At the relevant time, she along with Miss X, aged about 14 years, were went to the hospital where her mother was doing service by walk. At hospital, she asked Miss X that she went to inside the hospital and asking her to company her. But, she

did not accompany her. Thereafter, she along with her mother went out, but, they did not find Miss X there. They asked the guard of the hospital, whether the said girl went out or not. He replied that that the girl gone out to the right side of the road. They vigorously searched the girl, but could not find her. She also searched her in her house, but, could not find her. Thereafter, police came to their house and called them to the police station. Accordingly, they went to the police Station and meet Miss X there. On being asked Miss X told them that one person (pointing to Biren Bora) forcefully taken her away in his scooter towards the jungle way. She was afraid as she thinks that accused person may kill her. Thereafter, her mother filed the ejahar.

In cross-examination she stated that Miss X resides in their house for about four months. Police recorded her statement on 10-01-2018 at police station.

PW 3 Md. Nazir Ahmed Laskar, stated that the incident took 11. place in the month of January, 2018. He knows complainant Tilutoma Baruah. On the day of incident, at evening time, the complainant informed him over phone that their domestic helper Miss X, 14 years old was missing from the hospital. Inspite of vigorous search they could not find her. In the meantime police recovered said Miss X and took her to the house of complainant along with the accused and asked them to the police station. Accordingly, he went to the police station. Then at the police station he came to know from Miss X, she told that accused asked her where to go, she replied she want to go to her house and therefore, accused boarded said Miss X into his Scooty towards another road. The said girl again stated him that the girl repeatedly request accused to drop her down, but, the accused did not drop her and took her towards the jungle and then the girl jumped from the Scooty. During that time one Saiful Haque on being seen the girl and incident, informed the police.

In cross-examination, he admitted that the complainant is his neighbor. He has good relation with the complainant. He does not have

any personal knowledge how the girl was missing. About 6.30 PM the complainant informed him about the incident.

12. PW 4, the victim Miss X deposed that the incident took place in the last winter. In the evening time she along with Jan Baideo went to hospital to meet her Baideo Tiluttoma Baruah. Jan Baideo is the elder daughter of complainant Tiluttoma Baruah. Near hospital she was scared that she may be injected, therefore, she left the place. Then she played in a swing outside the hospital. Thereafter, she was returning to the house of Tiluttoma Baideo where she lived. On the way, the accused met her who was coming in a scooty and asked where are you going. She replied him that she wants to go home, then he asked her, where is your home. Then shereplied him that her house is at Garubandha. Then he willingly told her that he took to Garubandha to her house. Though initially, she refused to go with him but he forcefully took her in his scooty. She was supposed that he has taken her to her house at Garubandha and thought that he is a good man. He repeatedly asked her name. He took her towards a jungle then she asked him where he has taken her. Then he replied that he has taken her to her house. As the road does not lead to her home so out of fear she has jumped from the scooty of the accused. Out of fear she was very loudly crying and met one gentleman and told him about the incident. Then that gentleman took her to her house. Then she reported the matter to her Baideo. Then she filed the ejahar. After instituting the case, she has been medically examined. Thereafter, her statement was recorded through learned Magistrate u/s 164 Cr.P.C. In the said statement she put thumb impression.

In cross-examination, she stated that she came to the house of her Baideo before three months from the incident. She came to the house of Baideo to reside there and also do some domestic works there. Accused did not even touch her, only she afraid. The scooty was ride in very slow speed. After some time, out of fear she jumped from the scooty of the accused. Accused came from her backside. During that

time there was a darkness set in. After jumping from the scooty of the accused at a distance she met a gentleman. He took her to her house. At home she met Tiluttoma Baideo and Janba. On the said night she stayed at her house. On that very day, the said gentleman took her to the police station. On that day at the police station other than that gentleman and police personnel none was there. Then police interrogated her. She also admitted that she has not she has not stated to police that accused forcefully took her in his scooty.

- **13.** These much is the evidence of the prosecution.
- **14.** The accused pleads total denial while his statement was recorded u/s 313 Cr.P.C. he also denied to give defence evidence.
- **15.** I have heard the arguments put forwarded by learned counsel of both sides.
- **16.** To prove the charge u/s 366 A of the IPC, the prosecution must prove
 - "(i) that a minor girl below the age of 18 years is induced by the accused;
 - (ii) that she is induced to go from any place to do any act, and
 - (iii) that she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person."
- **17.** In this type of case, the evidence of the victim is very much important. As discussed herein before, the victim no way stated any of the ingredients to attract the section 366 A of the IPC. Besides, the complainant also failed to state any of the ingredients of the aforesaid alleged charged section. Therefore, the charge u/s 366 A of the IPC is fails.

18. Secondly, to prove the charge u/s 18 of the POCSO Act, the prosecution must prove that –

"To convict the accused section 18 of POCSO Act the prosecution must prove that accused attempted to commit any offence punishable under this act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence."

But here in this case, the complainant who is the mother of the victim no doubt a reported witness. She came to know about the incident only her victim daughter reported about the incident to her. According to her on the day of incident at about 7.15 PM she along with her daughter Rinki went out from hospital, but, they did not find said girl at the outside of the hospital. Then she informed the neighbor that they could find out the girl and then she along with neighbor searching the said girl. At that time, her younger daughter Momi informed her over phone that police took the girl to their house and she also asked her that police informed her to visit the PS immediately. Accordingly, she went to the Missamari PS. On being asked, Moina told her pointing to Biren Borah that said Biren Borah forcefully took her in his Scooty towards the side of Gabharu River through the jungle where she jumped out from the Scooty. But the allegation of forceful taking of victim by the accused is contradictory as she did not state neither before the I.O. nor before anybody. Other than that the complainant did not state anything. She simply stated that on suspect she filed this case. The victim PW 4 also stated that at the relevant time while she was returning to the house, the accused met her who was coming in a scooty asked her where she is going and she replied that she wants to go home. Then he asked her where is your home. Then accused willingly told her that he took her to Garubandha to her house. Though initially, she refused to go with him but he forcefully took her in his scooty. The accused forcefully taking in his scooty as stated in the court by the victim was not stated to the I.O. neither to the learned Magistrate while her statement was recorded u/s 164 Cr.P.C. Therefore,

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the allegation of taking forcefully by the accused is nothing but contradictory. This is a vital contradictions other than that statement victim no way stated anything against the accused as to any ingredients of the alleged charge u/s 18 of the POCSO Act. Therefore, the charge u/s 18 of the POCSO Act is also failed.

- **19.** In view of the aforesaid discussions, I am bound to hold that the prosecution has failed to prove any of the charge levelled against the accused person beyond any reasonable doubt. As such, the accused Sri Biren Borah is entitled to get acquittal on benefit of doubt. Hence, accused Sri Biren Borah is acquitted and set him at liberty forthwith.
- **20.** The liability of the bailor is hereby discharged.

Given under my Hand and Seal of this Court on this the 9^{th} day of March, 2018.

(A.K. Borah)
Special Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(A.K. Borah) Special Judge, Sonitpur, Tezpur.

Transcribed and typed by me.

(R. Hazarika)Steno.

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Smti Tiluttoma Baruah , complainant

2. Prosecution Witness No.2 :- Smti Rinki Baruah,

3. Prosecution Witness No.3 :- Md. Nazir Ahmed Laskar,

4. Prosecution Witness No.4 :- Victim

EXHIBIT

Ext. 1 : Ejahar.

(Ashok Kumar Borah) SPECIAL JUDGE SONITPUR: TEZPUR.