# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

**Present**:

Shri S. Das, A.J.S.,

Special Judge,

Dhemaji,

# JUDGMENT IN SPL.(POCSO) CASE NO. 42(DH)/ 2018.

U/S 376,366/34 of IPC R/W Sec.4 of POCSO Act.

#### The State of Assam

- Versus -

### 1. Shri Durlov Biswas,

S/O Debendra Biswas,

Vill. No.1 Bhairabpur Gaon,

P.S. Silapathar,

Dist.- Dhemaji.

## 2. Shri Debendra Biswas,

S/O Lt. Bharat Biswas,

Vill. No.1 Bhairabpur Gaon,

P.S. Silapathar,

Dist.- Dhemaji

.....Accused Persons.

#### Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri B. Borah, Advocate

.....For the Accused

Date of prosecution evidence

: 05-08-2019.

**Date of argument** 

: 23-10-2019.

**Date of Judgment** 

: 06-11-2019.

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#### JUDGMENT

- The prosecution case, in brief, is that on 16-02-2018 complainant- Smt. Maya Debnath lodged an ejahar with Silapathari Police Station alleging interalia that in the month of 'Kati', 2017 while her minor daughter Smti 'X' aged about 17 years, had gone to Manikpur to watch 'Rash Festival, but she did not come back home. They searched for her, but could not find her. After about 15 days of the occurrence, Smti Phulu Biswas took her daughter to their home. She (complainant) came to know from her daughter that accused-Durlov Biswas with the help of Debebdra Biswas and one Smt. Phulu BIswas kidnapped her daughter and kept her in the house of accused- Durlov Biswas for 4 months as his wife. It is further alleged in the ejahar that the family members of the accused-Durlov BIswas used to torture her (victim) in their house.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused persons u/s 376, 366/34 of IPC R/W Sec. 4 of the POCSO Act.
- On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 376 of IPC R/W Sec. 4 of POCSO Act against accused-Durlov Biswas and charges u/s 366/34 of IPC was framed against accused-Durlov Biswas and Debendra Biswas, and read-over and explained to them to which the accused persons pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statement of the accused persons were recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

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## 4. **Points for determination**:

- (1) That you ( Durlov Biswas) in the month of 'Kati', 2017 and thereafter at Maniukpur and No.1 Bhairabpur Gaon under Silapathar Police Satiation committed rape on Smt. 'X', a minor girl aged about 17 years, having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s **376** of IPC.
- (2) That you, on the same date, same time and thereafter you ( Durlov) committed penetrative sexual assault on Smti 'X', a minor girl aged about 17 years and thereby you committed an offence punishable u/s 4 of POCSO Act.
- (3) That, in the month of 'Kati', 2017 at Maniukpur under Silapathar Police Station you (Debendra Biswas and Durlov Biswas) in furtherance of common object abducted/kidnapped Smt. 'X', a minor girl aged about 17 years, from the road while she was going to enjoy 'Rash-Festival' at Manikpur, with intent that she might be compelled to marry you (Durlov Biswas) against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366/34 of IPC.
- 5. I have gone through the evidence on record and heard arguments of both sides.

## Discussion, Decision and Reasons thereof

6. **PW1 Smt. 'X' (victim girl)** stated the complainant is her mother. Accused-Durlov is her husband and accused-Debendra Biswas is her father-in-law. The incident took place about one year back. She had love affairs with the accused. One day she eloped with the accused without the knowledge of her parents. Her father got upset and lodged complaint before police. After filing of the case, she got married with the accused and now she is living with the accused (Durlov) as husband and wife. At the

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In cross-examination PW1 stated that now accused-Durlov Biswas is her husband and they are living together. She prays the Court to acquit the accused persons.

7. **PW2 Smt. Maya Devi Debnath** stated that she is the complainant. She knows the accused persons. The incident took place about one year. Her daughter had love affairs with the accused (Durlov Biswas). Her daughter had eloped with the accused without their knowledge. So, she lodged complaint before police against the accused persons. However, her daughter got married with the accused-Durlov and now she is peacefully living with him (Durlov) and hence, they decided not to break their relationship. So, she is not willing to proceed against the accused persons. Exhibit-1 is the ejahar and Exhibit-1(1) is her signature.

In cross-examination PW2 stated that now accused-Durlov BIswas is her daughter's husband. She prays before the Court to acquit the accused persons.

### Appreciation of evidence:

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Smt. Maya Devi Debnath were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the victim 'X' had love affairs with the accused-Durlov BIswas. One day she eloped with the accused without the knowledge of her parents. Parents of the victim 'X' got upset and lodged complaint before police. After filing of the case, she (victim) got married with the accused and now she is living with the accused (Durlov) as husband and wife. At the time of occurrence, the victim was aged about 19 years. Now, they

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( PWs-1 & 2) do not want to proceed against the accused and her parents are also not willing to proceed against the accused.

In cross-examination both PW1 and PW2 stated that now accused-Durlov Biswas is the husband of the victim (PW1) and they are living together peacefully in the house of the accused (Durlov Biswas). Both the P.Ws. pray before the Court to acquit the accused persons.

- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of absence of evidence. It is also seen from the evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused persons. I find that the prosecution has totally failed to prove the charges u/s 376/366/34 of IPC read with Sec.- 4 of the POCSO Act against the accused persons.
- In view of the above, I find the accused-**Durlov Biswas** not guilty u/s 376 of IPC read with Section-4 of POCSO Act and I also find accused persons-**Durlov Biswas and Debendra Biswas** not guilty u/s 366/34 of the I.P.C. Accordingly, both the accused-Durlov Biswas and Debendra Biswas are acquitted of the charges leveled against them. Set them at liberty forthwith.
- 11. Judgment is pronounced in open Court.
- 12. Given under my hand and seal of this Court on this the 6th day of November 2019.

(S. Das) pecial Judge, Dhomaji.