IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 3 (DH) 2015.

U/S 366 (A)/366 of IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

1. Smti Basanti Barman

W/O Subhash Barman,

Vill. Adi-pathar,

P.S. Silapathar,

Dist.- Dhemaji.

.....Accused

Appearance:

Shri A. Fogla, Public Prosecutor

.....For the State

Shri K.C. Sonowal, Advocate

.....For the Accused

Dates of prosecution evidence

: 30-03-2016, 27-06-2016, 15-09-2016,

07-01-2017, 23-11-2017, 10-05-2018

and 01-09-2018.

Date of argument

: 26-02-2019.

Date of Judgment

: 05-03-2019.

JUDGMENT:

- The prosecution case, in brief, is that on 09-08-2015 complainant- Shri Aimon Debnath lodged an ejahar with the Likabali Patrol Post under Silapathar Police Station alleging interalia that on 23-07-2015 his minor daughter Smt. Phulmati Debnath aged about 15 years went to a Birth Day Party of her friend and thereafter, she did not come back home. They searched for her but they did not find her. It is stated in the ejahar that on 09-08-2015 they came to know that some unknown person kidnapped his daughter and kept her confined in Rajasthan and now both victim and the accused are in the custody of Rajasthan Police.
- On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused persons- Shri Shyam Prajapati and Smti Basanti Barman u/s 366(A) of IPC.
- 3. 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 366 of IPC read with Sec. 4 of POCSO Act against accused- Shyam Prajapati and charge u/s 366 (A) of IPC against the accused- Smti Basanti Barman. The charges were read-over and explained to the accused persons to which they pleaded not guilty. The prosecution, in order to prove its case, examined three witnesses. At the closure of the prosecution evidence statements 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.
- During trial, accused-Shyam Prajapati absconded. The case against him was filed vide order dated 10-08-2017. Hence, the case proceeded against accused-Smt. Basanti Barman only.

5.Point for determination:

- (1) That, on 23-07-2018 after 2 PM at Adi-pathar Village under Silapathar Police Station induced SMt. PHulmoti Devnath, a minor girl under the age of 18 years, to go with Shyam Prajapati and thereby you committed an offence punishable u/s 366(A) of IPC.
- I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

7. PW1 Smti Phulmati Debnath stated that she knows accused Shyam Prajapati and accused Basanti Barman. Complainant Shri Aiman Debnath is her uncle (Bordeota). The occurrence took place about 9 months back (from the date of her deposition). Manisha and Anita, daughters of her uncle, came to their house and stayed for three days. While they returned to their house, they left their clothes in their house. She went to her uncle's house to give the clothes. While she was returning home she met accused Basanti Barman on the road. She (Basanti) called her to the birth day party. As she refused to go with Basanti, she forcibly got up her in to a vehicle and took her to Silapathar. Accused-Shyam Prajapati was at Silapathar. Accused Basanti sent her to Lakhimpur with accused-Shyam Prajapati. He (Shyam Prajapati) kept her in a hotel at Lakhimpur and had sexual intercourse with her for two days. Accused-Shyam Prajapati penetrated his penis into her vagina. He (Shyam) asked her not to make hue and cry. So, she did not raise any hue and cry. Shyam Prajapati first took her to Guwahati by bus and thereafter took her to Rajasthan by train. At Rajasthan she told to a girl about the occurrence and she took her to the police station. Later on her father with the help of police brought back her home. Doctor examined her medically. Police and Magistrate also questioned her.

Special Judge,
Dhemeli.

In cross-examination PW1 stated that on the date of occurrence there was no any person with accused-Basanti Barman. She denied the defence suggestion that she did not state before the Magistrate that Basanti did not forcibly take her to Silapathar by the vehicle. Basanti went to Silapathar with her. It is denied that Basanti did not take her to Silapathar in a vehicle. Accused took her to Guwahati from Lakhimpur by Bus. She was taken to Rajasthan by train. She did not raise hue and cry as accused threatened her. She also denied that she was not taken to Rajasthan. It is also denied that she has given false evidence.

8. **PW2** Shri Aimon Debnath stated that Exhibit-1 is the ejahar filed by him. He has filed this case about kidnapping of his grand-daughter Phulmati. Police of Rajasthan recovered Phulmoti. Phulmoti was brought back to Silapathar from Rajasthan by her father with the help of police. On being asked to Phulmoti , she told that accused Basanti took her to Silapathar by a vehicle and thereafter accused-Shyam Prajapati took her from Silapathar to Lakhimpur and thereafter to Guwahati and from Guwahati she was taken to Rajasthan. Phulmoti also told that accused-Shyam had sexual intercourse with her. Police recorded his statement.

In cross-examination PW2 denied that he has given false evidence. The ejahar was written by another person. He did not read-over the contents of the ejahar. He narrated the facts of the case to the scribe and accordingly, the scribe wrote the ejahar.

9. PW3 Shri Ambika Debnath stated that he knows accused-Shyam Prajapati. Phulmoti Debnath is the niece of Aimon Debnath. The occurrence took place about one year back. Phulmoti Debnath was missing. Later on, police recovered Phulmoti from Rajasthan. He heard that she was recovered from your house. Police brought you and Phulmoti to Silapathar. He did not ask anything to Phulmoti.

Defence declined to cross-examine PW3

Pw4 Shri Nipul Debnath stated that he knows accused-Shyam Prajapati and Basanti Barman. Complainant is his elder brother. Phulmoti Debnath is his niece. Name of the father of Phulmoti is Nokul Debnath. The occurrence took place about one year back. Accused Basanti Barman came to their house. Basanti took Phulmoti to the birthday party. As Phulmoti did not come back home, they went to the house of Basanti but they did not meet her. On the next day they met accused Basanti Barman. Some persons also accompanied him to Basanti Barman's house. On being asked to Basanti Barman, she told that Phulmoti went with her up to M.E.S., thereafter where Phulmoti has gone, she did not know. They searched for Phulmoti, but did not find her. Later on Aimon Debnath lodged complaint at police station. Police recovered Phulmoti from Rajasthan later on. On being asked, Phulmoti told that accused-Shyam Prajapati took away Phulmoti. Police recorded his statement.

In cross-examine PW4 stated that he did not ask the victim Phulmoti how Shyam Prajapati took her to Rajasthan. He denied the defence suggestion that he lied that the accused-Basanti took the victim to a Birth Day Party.

Basanti Barman and the other co-accused. He knows Aiman Devanath and Phulmoti Debnath her niece. It was one year ago. After about 4 days of the incident Surmai Debnath came and told that Phulmoti was missing and since Phulmoti was his niece, he also searched for her but did not find her. Then a meeting was called and in that meeting the villagers suspected accused-Basanati and accused-Shyam Prajapati as Phulmoti used to go to her. They asked them (accused) but they have said that they did not know. Amibika Debnath had seen Phulmoti with accused-Basanti at M.E.S., Likabali. They

did not find Phulmoti and then Aimon filed the case. The police brought



Phulmoti back form Rajasthan and now she is with Aimon. She did not ask anything to Phulmoti.

In cross-examine PW5 denied the defence suggestion that he had not heard from Ambika about seeing Phulmoti with Basanti.

12. **PW6** Smti Suradhani Debnath stated that she knows accused-Shyam Prajapati and the accused Basanti Barman. He also knows Aimon Debnath and Phulmoti Debnath who are their neighbours. It was one year back. Phulmoti's mother was crying and when she asked her she told that Phulmoti was missing for about 4 days. Later Phulmoti had returned. She did not ask Phulmoti anything.

Defence declined to cross-examine PW6.

PW7 Shri Apul Debanth stated that he knows accused-Shyam Prajapati and Basanti Barman. He knows Aiman Debnath and Phulmoti Debnath. It was last year. On that day he was making the fence and accused-Basanti had come there twice. Thereafter he had gone to the market and on his return he had asked his mother where Phulmoti was and she said that Phulmoti had gone with Basanti to have a birthday. Phulmoti did not return and they searched for her. Then Aiman filed the case. Then Sonowal Sir (IO) recovered Phulmoti from Rajasthan. He asked Phulmoti and she had told him that accused-Basanti had taken her to have birthday and then she gave her to Shyam Prajapati, who then took her to Rajasthan.

In cross-examination PW7 stated that police had questioned him. He denied the defence suggestion that he had not told the police that he asked Phulmoti and she had told him that Basanti had taken her to have birth day and then she gave her to Shyam Prajapati who then took her to Rajasthan.

14. PW8 Subal Devnath stated that complainant is his elder brother. Accused Shyam Prajapati and Basanti Barman are known to him.

Victim Phulmati Devnath is his niece. The incident took place in the year 2015. On the date of occurrence Phulmati had gone to her maternal uncle's home to attend birthday party. But she did not return home till late at night. Then they started to search for her but they could not find. Then they reported the matter to Likabali Police. 5/6 days after the incident after his niece went missing they received information from Jaypur Police Station, Rajasthan that Phulamati is in the custody of police. Then they along with police went to Rajasthan and they met Phulmati at Joypur police station and brought her back to Dhemaji. At the time of occurrence Phulmati was aged about 15 years. Police also apprehended the accused-Shyam and brought him to Silapathar police station from Rajasthan. Then they handed over the accused-Shyam Prajapati and the victim to Silapathar police. On being asked Phulmati told us that she had been kidnapped by the accused Shyam Prajapati. She also told that accused-Shyam Prajapati made the plane for kidnapping by staying in the house of accused Basanti Barman.

In cross-examination PW-8 stated that police examined him in connection with this case. He denied that accused Basanti Barman was not involved in the alleged offence.

15. PW9 Dr. Chandrajit Doley stated that on 18-08-2015 he was serving as M&HO 1 at Silapathar Model Hospital. On that day at 10:30 AM he examined Phulmoti Devnath aged about 15 years female, daughter of Lt. Nakul Devnath on police requisition. She was identified and escorted by WPC, Janaki Chetry Barman. On examination he found as follows:-

Marks of identification- Black mole over right side of the face.

History-

Description of the incident- She was forcefully taken away by the accused person and was forced to have sexual intercourse with the accused.

General Physical Examination-

- i. Whether oriented in space & time yes
- ii. Pulse -72th BP-120/80, Temp-36.5 Res. Rate-14 per minute
- iii. Pupils- NSNR
- iv. Clothing- Fresh

Whether the victim has washed her genitalia/mouth/anal canal and changed her clothes or not after the incident- yes.

Examination for injuries:-

(Look for Bruises, Systemic Physical torture injuries, Nail abrasions, Teeth bite marks, Cuts, lacerations, head-injury, any other injury)

Injury Site - No injury

Pubic Hair combing- Not present

Labia Majora—Any swelling, tears, edematous, bruises or abrasion—No injury.

Labia Minora—Scratch, bruising, fingernail marks tear, infection-No injury.

Fourchette-Bleeding, tear- No injury

Vulva—Any injury, bleeding, discharge-No injury

Hyment-Intact/Torn- Not present

Injury-fresh/oedema/congestion/tenderness

Vagina & Cervix (Any Bleeding/tear /dpsckarge/edea/teder,ess)-No injury.

Opinion- After physical examination and pathological examination there is no any evidence of recent forceful sexual intercourse or

violence mark on her body or private parts. According to the birth certificate, her age is 15 years.

Ext.2 is medical repor and Ext.2(1) is his signature.

Defence declined to cross-examine PW9 (Doctor).

PW10 Shri JUgal Sonowal stated that on 09-08-2015 he was 16. posted at Likabali P.P. as I/C. On that day, he received an ejahar from Shri Aimon Debnath. He made GD Entry vide No.114 dated 09-08-2015 and forwarded the original copy of ejahar to OC Silapathar for registering a case. He took up investigation. Informant appeared in the patrol post and he recorded his statement at the PP. On the same day OC registered a case vide PS Case No.202/15 u/s 366A IPC and entrusted him for investigation of this case. He sought permission from SP to move to Rajasthan to recover the victim girl and SP accorded permission. On his arrival at Jodhpur PS in Rajasthan he found that Jodhpur police apprehended accused-Shyam Prajapati and the victim and brought him and the victim to Police Station. Accused-Shyam Prajapati and the victim were handed over to him by Jodhpur Police and he brought them to Silapathar P.S. He arrested the accused-Shyam Prajapati and forwarded him to court. Victim was medically examined and she was produced before Magistrate for recording her statement u/s 164 Cr.PC. He visited the PO and drew sketch map. He also recorded statement of witnesses. During investigation he found material showing Basanti Barman (accused) involvement in this case. Accordingly, he arrested her and forwarded her to court. After completion of investigation he filed chargesheet u/s 366 A IPC R/W section 4 of POCSO against accused- Shyam Prajapati and u/s 109 IPC against the accused- Basanti Barman. Ext.3 is GD Entry. Ext.3(1) is his signature. Ext.4 is sketch map. Ext.4(1) is his signature. He seized original birth certificate from the complainant. Ext.5 is seizure list and Ext.5(1) is his signature. Ext.6 is the statement of victim Phulmati

Debnath u/s 164 Cr.PC. Victim put thumb impression in her statement. Ext.7 is the Charge- sheet and Ext.7(1) is his signature.

Appreciation of Evidence:

- 17. From the discussion of the evidence on record it appears the victim has been examined as Pw1. In her evidence-in chief victim identified accused Basanti Barman and categorically stated that on the relevant date and at the relevant time accused Basanti Barman forcibly took her to Silapathar and at silapathar she was handed over to Shyam Prajapati and Shyam Prajapati took her to lakhimpur and then took her to Gauhati and then to Rajasthan. Victim also stated that accused had sexual intercourse with her in the hotel at Lakhimpur.
- Other non-official PWS spoke of the victim being kidnapped and also spoke of the involvement of accused Basanti and Shyam prajapati in taking away the victim. It is in the evidence of the PWS that the victim along with the accused were recovered from Rajasthan. The IO stated that he went to Rajasthan and brought the victim and the accused from Rajasthan on being caught and handed over by Jodhpur PS, Rajasthan.
- 19. On careful scrutiny of the evidence of PWs it is found that the PWS have given consistent and convincing evidence which would show the involvement of accused Basanti Barman in taking away the victim.
- 20. Now let me see whether the act of the accused constitutes an offence u/s 366(A) IPC.

Sec 366 IPC reads: 'Kidnapping, abducting or inducing woman to compel her marriage, etc. – Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description

of a term which may extend to ten years, and shall also be liable to fine."

"To bring home the guilt of the accused under sec. 366, it is necessary for the prosecution to prove that the accused induced the Prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may be seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may be induced to illicit intercourse as a result of her abduction or kidnapping."

- I have carefully scrutinised the evidence on record. The victim has categorically stated in her evidence that while she was returning from her uncle's house, accused Basanti Barman met her on the road and Basanti asked her to come with her to attend a birthday party. When she refused to go with her, Basanti forcibly got her in to a vehicle and took her to Silapathar. At Silapathar Basanti handed her over to accused Shyam Prajapati and accused Shyam Prajapati took her to Lakhimpur and then to Rajasthan. As per statement of PW10, the IO, the victim was recovered from Rajasthan after filing of the ejahar in this case.
- 22. It may be mention here that the accused Shyam Prajapati absconded and Basanti Barman is facing trial. From the prosecution evidence brought on record it is found that Basanti Barman took the victim to Silapathar without the consent of her lawful guardian. It is not in dispute that the victim is aged 15 years as stated by MO on the basis of birth certificate of the victim. As per Ext.5 seizure list police seized birth certificate from the victim and police also mentioned in the seizure list that her date of birth is 12-09-2000. The date of occurrence was 23-07-2015. So the ingredients of kidnapping are established in this case thereby a case u/s 363 IPC is made out. However we find that as discussed above the ingredients sec 366(A) IPC are not fully proved.

23. In view of the above I find that prosecution has been able to prove offence u/s 363 IPC against the accused Basanti Barman beyond all reasonable doubt.

ORDER:

- In the result I find accused Basanti Barman guilty u/s 363 IPC.
 Accordingly she is convicted thereunder.
- Heard the accused on the point of sentence.
- 26. The accused stated that she has a minor child and she is very poor lady and she is making her living working as day labourer and she has her minor child aged about 5 months. So, she pleaded for mercy.
- 27. Considering all aspect accused is sentenced to S.I. for 3 (three) months and to pay a fine of Rs.500 (five hundred) i/d for another 1 (one) month.
- Set off the period of detention.
- A copy of judgment free of cost be given to the accused persons.
- Judgment is pronounced in open Court.

31. Given under my hand and seal of this Court on this the **05th** day of March/2019.

(S. Das)

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