IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 61 OF 2017

(Under Section 4 of the POCSO Act,

arising out of GR Case No 3328 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Sri Bhai Bhuyan

S/o Sri Ramesh Bhuyan, Vill- Jamuguri, Borbhugia

P.S. – Jamuguri, Dist – Sonitpur, Assam

Date of framing charge :- 16-12-2017.

Date of Recording Evidence :- 30-12-2017, 11-01-2018,24-01-2018.

Date of examination of accused u/s :- 22-02-2018.

313 of Cr.P.C.

Date of Argument :- 22-02-2018.

Date of Judgment :- **22-02-2018.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Mr HP Sadai, Advocate.

JUDGMENT

- 1. In this case accused Sri Bhai Bhuyan is put for trial for the allegation of charge under Section 4 of the POCSO Act.
- 2. The factual matrix according to the FIR in brief is that on or about 9.30 PM of 27-08-2017 accused came to the house of informant and kidnapped her on the pretext of love affairs. Thereafter, informants daughter was hide in some

unknown place. Hence, this prosecution case.

- 3. The ejahar was filed by the informant Sri Pabitra Saikia before the OC, Jamuguri Police Station on 28-08-2017.
- 4. On receipt of the ejahar, O/C, Jamuguri Police Station registered the case vide Jamuguri Police Station Case No 107/17 under Section 365 of the IPC. After completion of investigation, O/C, Jamuguri Police Station sent up the case against the accused person under Section 4 of POCSO Act, r/w Section 363 of IPC.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 4 of POCSO Act, r/w Section 365 of the IPC. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined as many as six PWs including the informant and victim. After examination of the witnesses, learned Counsel for the accused submitted to close the prosecution evidence on the ground that the statement of victim stated nothing against the accused as to the alleged offence. Besides, in her statement under Section 164 of CrPC she stated that she was in love with the accused so, at her repeated request, accused took her. Therefore, no ingredients of alleged charge is revealed. Therefore, it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. On perusal of the statement of witnesses including the complainant and victim, I think that prosecution case would not develop, even if examine the other prosecution witnesses, as they were no way supported the prosecution case. Even if examine the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused person. Considering this all, prosecution evidence is closed.
- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused persons and the allegations made against the accused person are put before me for his explanation where they denied the allegations and declined to give defence evidence.

- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that
 - (1) "Whether the accused, on 27-08-2017 at about 9.30 PM, at Borbhugia under Jamuguri PS, committed penetrative sexual assault to Smti "X" aged about 16 years minor girl and thereby committed an offence punishable under Section 4 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- 12. **PW1** Sri Dhon Borah deposed that he knows accused Bhai Bhuyan who is present in the dock. Victim Puja Saikia is his sister-in-law, i.e. she is the daughter of the maternal uncle of his wife. The incident took place on 27-08-2017. At the relevant day at about 9/9.30 PM we are about to have dinner. Then Pabitra Saikia rings him and called him to his house stating that Puja was missing from his house. Then, he along with his wife Smti Karishma and his two years old son rushed to the place of occurrence, which is about 200 meter from his house. We searched Puja Saikia vigorously in nearby area, but, could not trace her out. Then, I informed to police and giving missing entry. In the next morning they came to know that Puja went with accused Bhai Bhuyan. Then, after recovery of the victim, father of the victim filed the written ejahar.

In his cross-examination, he stated that on that very night they have give missing entry at the police station. He does not know if Puja Saikia has love affairs with Bhai Bhuyan. It is a fact that he has stated to police that Puja Saikia loved Bhai Bhuyan, so, she went with accused Bhai Bhuyan. Other than that, he does not know anything about the incident.

13. **PW2-** Sri Pabitra Saikia deposed that he knows accused Bhai Bhuyan who is present in the dock. Victim Puja Saikia is his daughter. The incident took place on 27-08-2017. On that day at about 9/9.30 PM my daughter Puja was missing from

his house. They have vigorously searched her, but, could not find her. In the next day he filed the case before the police station. Though accused resides at the house which is adjacent and the same boundary of his house, inspite of knowing that they have searched the victim, the family members of the accused did not disclosed that the victim was kept in their house. Thereafter, police recovered his daughter by breaking open the lock of the house of the accused. Ext.1 is the ejahar and Ext. 1(1) is his signature. Ext.1 was written by one scribe as per his dictation. He knows reading and writing, therefore, after reading the ejahar, I put his signature thereon.

In cross-examination, he stated that he admitted that accused Bhai Bhuyan belongs to Adibasi community and the accused is economically not sound. As the accused Bhai Bhuyan belongs to other community, they do not like to give marriage his daughter to him.

14. **PW3-** Smti Buli Saikia, the mother of the victim deposed that she knows accused Bhai Bhuyan who is present in the dock. He belongs to their village. Complainant is her husband. The incident took place on 27-08-2017 at about 8.30 PM. Victim Puja Saikia is her daughter. At the time of incident she is 16 years old. On the day of occurrence, she did not take her dinner. She searched for her, but, could not found her. Then, she informed the matter to her elder brother Bhaskar Saikia. Bhaskar Saikia arrived and they vigorously searched her, but, could find her. In the next day, while she along with her husband went to the police station, to inform about the matter, the OC, Jamuguri PS told us that it is the accused who kidnapped her daughter. Then, her husband Pabitra Saikia filed the ejahar. On the same day, police recovered her daughter Puja Saikia along with accused. Thereafter, police sent her daughter for medical examination and then also sent her to the Court for recording her statement under Section 164 CrPC. Thereafter, her daughter was given to our custody.

In cross-examination, she stated that at the time recovery of her daughter, she was at police station. She cannot say from where her daughter was recovered. Bhai Bhuyan is her neighbour.

15. **PW4** – Sri Bhaskar Saikia deposed that he knows accused Bhai Bhuyan who is present in the dock. He belongs to their village. Complainant is his brother-in-law. The incident took place on 27-08-2017 at about 9.30 PM. Victim Puja Saikia is his niece. At the time of incident her age was 16 years. On the day of

incident at about 9.45 PM, his sister Buli Saikia informed me that her daughter/victim was missing from her house and then he rushed to her house and we vigorously searched his niece, but, we could not find her. Then, in the next day i.e. on 28-07-2017 while he was in School, he came to know that the victim was recovered by police from the lock and key room of accused Bhai Bhuyan. After recovery of the victim, his brother-in-law filed a case against accused. Police recorded his statement. After recovery, police sent Puja Saikia/victim for medical examination and then also sent her to the Court for recording her statement under Section 164 CrPC. Police seized one HSLC Certificate of Puja Saikia. Ext. 2 is the said HSLC certificate of Puja Saikia and Ext. 2(1) is his signature.

In cross-examination, he stated that he has not stated to police that Puja Saikia was recovered from the lock & key room of Bhai Bhuyan. He has not seen how and from whom house, the victim was recovered. He does not know if the accused and victim had love affairs.

16. **PW5** – the victim Miss "X" stated that she knows accused Bhai Bhuyan who is present in the dock. He belongs to their village. The incident took place on 27-08-2017 at about 9.30 PM. On that day accused took her to his house by enticing her. The mother of accused Bhai Bhuyan locked me in their home. Accused asked me not to inform that matter to my parents. Thereafter, her father filed the ejahar and police recovered her. Then only she came to know that her father has filed a case. Then police took me for medical examination by the doctor and then sent me to the Court for recording her statement under Section 164 CrPC. Ext.3 is her statement under Section 164 CrPC and Ext. 3(1) and Ext. 3(2) are her signatures.

In her cross-examination, she admitted that since, Bhai Bhuyan belongs to Adibasi community and they are belongs to Assamese community so, to resist her from marrying to the accused her parents filed this false case against the accused.

17. PW6 – Smti Bijoya Khaklary stated that On 29-08-17 she was posted at Tezpur as Judicial Magistrate, 1st Class, Tezpur. On that day in reference to Jamugir Police Station Case No 107/17, under Section 365 of IPC, she has recorded the statement of one Miiss Puja Saikia, D/o Sri Pabitra Saikia, of village Borbhogia, under Jamuguri PS in her Court chamber. At the time of recording of the statement, other than her and witness, none was there. The witness made statement

voluntarily. After recording her statement, she has read over the contents of the contents of the statement and on acceptance, she put her signature thereon. The victim was escorted and identified by one Nayanjyoti Gogoi PLV M No17. Ext.3(3) is her signature in Ext.3. Ext.4 is the relevant order dated 29-08-2017 for recording statement under Section 164 CrPC and Ext.4(1) is her signature

- 17. These much is the prosecution evidence.
- 18. The accused is charged under Section 4 of POCSO Act. To prove the charge under Section 4 of POCSO Act, prosecution must prove that –

Penetrative Sexual Assault: A person is said to commit "Penetrative sexual Assault" if —

- "a) he penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a child or makes the child to do so with him or any other person;
- b) h e inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body or the child or makes the child to do so with him or any other person; or
- d) he applies his mouth to the penis, vagina, anus, urethra or the child to do so to such person or any other person".
- In this type of cases, the evidence of victim is much more important. Here in this case, **the victim PW-5** stated that the incident took place on 27-08-2017 at about 9.30 PM. On that day accused took her to his house by enticing her. The mother of accused Bhai Bhuyan locked me in their home. Accused asked me not to inform that matter to my parents. Thereafter, her father filed the ejahar and police recovered her. Then only she came to know that her father has filed a case. From the statement of the victim it appears that she did not give any evidence as to the alleged offence against the accused. She only stated that mother of the accused has locked her in a room. Though the doctor was not examined, as prosecution failed to produce him, according to medico-legal report available in the record, it appears that the victim is above 18 years. Other than that medico-legal report, there is no any evidence that the IO has collected any birth certificate or age certificate or certificate from the school where the victim first admitted. Therefore, from the

aforesaid medico-legal report we can come to conclusion that victim is a major one. So, obviously the case cannot come under Section 4 of the POCSO Act. On the other hand, it is interesting to state that while the statement of victim was recorded under Section 164 CrPC, the victim stated before the learned Magistrate that she loves the accused for last 3/4 months. On 27-08-2017 at about 8.30 PM, she called accused Sanju to bring her, though initially, he was not agreed, but, on repeated request, on that very day, he came to her house at about 9 PM and she without informing any of their family members, meet the accused at the road and she at her own will went with the accused. Therefore, the victim even not stated before the learned Magistrate about any of the ingredients required to fulfill the allegation of charge under Section 4 of POCSO Act. Besides, that other witnesses have also stated nothing about the incident. Therefore, I am bound to hold that prosecution has failed to prove the charge under Section 4 of POCSO Act. As such, I do not have any hesitation to acquit the accused. Accordingly, accused **Sri Bhai Bhuyan** is acquitted and set them at liberty forthwith.

- 21. The liability of the bailor is hereby discharged.
- 22. Send back the LCR.

Given under my Hand and Seal of this Court on this the 22nd day of February, 2018.

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

Dictated and corrected by me.

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

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

APPENDIX

Witnesses examined by the prosecution:

- 1.PW1 Sri Dhon Borah,
- 2.PW2 Sri Pabitra Saikia, Complainant,
- 3.PW3 Smti Buli Saikia,
- 4.PW4 Sri Bhaskar Sakia,
- 5.PW5 Smti "X" (Victim) &
- 6.PW6 Smti B Khaklary, (Magistrate)

Documents exhibited by the prosecution:

- 1. Ext. 1: The ejahar,
- 2. Ext. 2: HSLC Certificate of victim,
- 3. Ext. 3: Statement of victim recorded under Section 164 of CrPC,
- 4. Ext. 4: The relevant order of recording statement under Section 164 CrPC.

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