IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 41 OF 2016

(Under Section **8** of the POCSO Act, r/w Section **366** of IPC, arising out of GR Case No 1606 of 2014)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Md Mokbul Hussain

S/o Md Ahmed Ali, Vill- No 2, Adabheti, P.S. – Sootea, Dist- Sonitpur.

Date of framing charge :- 24-10-2017

Date of Recording Evidence :- 11-12-2017.

Date of examination of accused u/s: 11-12-2017.

313 of Cr.P.C.

Date of Argument :- 11-12-2017.

Date of Judgment :- **11-12-2017.**

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Md Mainul Haque, Advocate.

JUDGMENT

- 1. In this case accused Mokbul Hussain is put for trial for the allegation of charge under Section 8 of the POCSO Act, r/w Section 366 of IPC.
- 2. The factual matrix according to the FIR in brief is that on or about 6.30 PM on 09-07-2014 accused kidnapped the minor daughter of the informant.

Since then, the minor daughter of the informant could be recovered. Hence, this prosecution case.

- 3. The ejahar was filed by the complainant Smti Lila Devi before the OC, Sootea Police Station on 10-07-2014.
- 4. On receipt of the ejahar, O/C, Sootea Police Station registered the case vide Sootea Police Station Case No 74/14 under Section 366-A of the IPC. After completion of investigation, O/C, Sootea Police Station sent up the case against the accused person under Section 8 of POCSO Act, r/w Section 366-A/376 of IPC.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 8 of POCSO Act, r/w Section 366 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 two PWs i.e. 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 informant and victim no way support the prosecution case and it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. A close scrutiny of the statement of the statement of complainant and victim, it appears that none of the complainant or victim could reveal any materials to the alleged offence against the accused. 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 on or about 6.30 PM on 09-07-2014, at village No 2 Koroiyani under Sootea PS, accused kidnapped Smti "X" with intent that she may be compelled to marry against her will, or may be forced to illicit intercourse and thereby committed an offence punishable under Section 366 of the IPC?
 - (2) "Whether on the same time, date and place mentioned above, you have committed sexual assault to Smti "X" aged about 16 years minor girl and thereby committed an offence punishable under Section 8 of POCSO Act?

Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- PW1 Smti Lila Devi, the complainant of this case deposed that she 12. knows accused Mokbul who is her son-in-law. At the time of incident, her daughter Miss "X" was only about 16 years old. At the relevant time her said daughter was missing from her house at the evening time. They have vigorously searched her, but, did not found. Then, she informed the matter to the police station and files the ejahar on the next day of incident. On the day of incident, she has given missing entry in the police station and on the next day she has file written ejahar before the police station. Before filing the ejahar, she came to know that accused kidnapped her daughter. Ext.1 is the ejahar and Ext.1(1) is her signature. She cannot recall who has written the ejahar. After two years of missing of her daughter, we came to know that her daughter has come to the house of accused. After recovery of her daughter, police medically examined her and also sent her to the Court for recording her statement under Section 164 CrPC. At present, her daughter lives with the accused as husband and wife. She also gave birth to a child from the side of accused. But, they did not come to her house.

In cross-examination She stated that at present she does not has any objection, if her daughter stays with the accused as husband and wife. At present her daughter's age is about 20 years.

13. PW2- Smti "X" the victim of this case stated that accused Mokbul is her husband. He is a professional driver. She knows him before eloping with him. At the relevant time, she eloped with the accused without informing to her family member. Thereafter, we reside with the accused at Guwahati in two years. After two years Mokbul came to his house. After eloping her by the accused, they have performing marriage. She has not informed to her family member including her mother. Therefore, her mother filed this case. After two years, when they returned, police examined me medically, recorded her statement and also sent her to the Court for recording her statement under Section 164 CrPC. Ext.2 is the statement under Section 164 CrPC and Ext. 2(1) and Ext.2(2) are her signatures thereon. She gave birth to one child which is with her, from the side of Mokbul. Before birth of this baby, she has also given birth to a child, but, he was died. At the time of her eloping, her age was 17 years.

In cross-examination, she stated that at present, she lives with her husband i.e. the accused. She does not have any objection against her husband.

- 14. These much is the prosecution evidence.
- 15. The accused is charged under Section 366 of the IPC, r/w Section 8 of POCSO Act. To prove the charge under Section 366 of IPC, prosecution must prove that
 - "(i) kidnapping by the accused or abduction by him;
 - (ii) that the person so kidnapped or abducted is a woman;
 - (iii) that the accused then intended, or know that it was likely,
 - (a) That such woman might or would be compelled to marry a person against her will, or (b) That she might or would be forced or seduced to illicit intercourse."
- 16. From the statement of victim and complainant, it appears that none of the ingredients is fulfill by any witnesses. The victim by giving good bye to the prosecution case stated that at the relevant time by her own will, she eloped with the accused and thereafter married with him and at present lives with him as husband and wife having one kid. Therefore, allegation of charge under Section 366 of IPC is failed.

17. Next, come to prove charge under Section 8 of POCSO Act, prosecution must prove –

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child and makes the child touch the vagina, penis, anus or breast of such person or any other person, or does ny other Act with sexual intent which involves physical contact without penetration is said to commit sexual assaualt".

- 18. In such type of cases, statement of victim is so important. Here in this case, according to victim, she at her own will eloped with the accused and thereafter married with him and at present she lives with the accused as husband and wife. She has also a child from the side of the accused. She clearly stated that accused is innocent person. As such no ingredient of sexual assault is proved. Hence, charge under Section 8 of POCSO Act is failed.
- 19. On careful perusal of the whole case record, it appears that prosecution has categorically failed to prove any of the alleged charge against the accused. Hence, I do not have any hesitation to acquit the accused. Accordingly, accused Mokbul Hussain is acquitted and set them at liberty forthwith.
- 20. The liability of the bailor is hereby discharged.
- 21. Send back the LCR.

Given under my Hand and Seal of this Court on this the 11^{th} day of December, 2017.

(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 – Smti Lila Devi, Complainant & 2.PW2 –Miss "X" (victim).

Documents exhibited by the prosecution:

1. Ext. 1 : The ejahar.

2. Ext. 2: Statement of the victim recorded under Section 164 CrPC

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