

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
 Special Judge,
 Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 29 (DH)/ 2017.

(U/S 366/34/376 (D) of IPC R/W Sec.4 of POCSO Act.)

The State of Assam

- Versus -

1. Shri Nibash Rajbonshi

S/O Subal Rajbonshi,
 Vill. Gourangapur,
 P.S. Silapathar,
 Dist.- Dhemaji.

2. Shri Dulu Barman,

S/O Surya Barman,
 R/O Adi-Pathar,
 P.S. Silapathar,
 Dist.- Dhemaji.

3. Shri Babul Arya,

S/O Lt. Meghnath Arya,
 P.S. Silapathar,
 Dist.- Dhemaji. Accused Persons

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Appearance:

Shri A. Fogla, Public Prosecutor For the State

Shri K.C. Sonowal, Advocate For the Accused

Date of prosecution evidence : **03-12-2018**

Date of argument : 07-12-2018.

Date of Judgment : 07-12-2018.

JUDGMENT

1. The prosecution case, in brief, is that on 10-02-2017 complainant-Shri Dipak Barman lodged an ejahar with Silapathar Police Station alleging interalia that on 08-02-2017 in the evening while his (complainant's) daughter -Smti 'X' (name is withheld) was coming to the field to release the cows from tethering , then accused-Nibash Rajbonshi and Dulu Barman kidnapped/abducted her from the field by gagging her mouth and took her to the house of accused-Babul Arya at village-Gourangapur. It is also alleged in the ejahar that the accused Nibash Barman committed rape on his (complainant) daughter the whole night. Further, it is stated in the ejahar that on the next day, the victim girl was recovered from the house of accused-Babul Arya of Gourangapur Village.

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 355 (A)/342/376 of IPC R/W Sec. 4 of the POCSO Act.

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 366/376 D/34 of IPC R/W Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined three 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. Point for determination :

(1) That, on 8-2-2017 in the evening at Village-Adi-Pathar under Silapathar Police Station, you (accused Nibash Rajbonshi and Dulu Barman) in furtherance of common intention of both, kidnapped/ abducted Smti 'X' , a minor girl aged about 14 years, with intent that she might be compelled to marry you (accused-Nibash Rajbonshi) 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.

(2) That, you all on the same day at village-Gourangapur committed rape on Smti 'X', , a minor girl aged about 14 years, having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s 376 D of IPC.

(3) That, you all on the same day at village-Gourangapur committed penetrative sexual assault on Smti 'X' and thereby you committed an offence punishable u/s 4 of POCSO Act.

5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** Smti 'X' stated that the Complainant is her father. She knows the accused persons. The occurrence took place about 1 ½ years back. She went to the field to fetch cow. While returning from the field she met accused Nibash Rajbongshi and Dulu Barman on the way and she went to Babul Arya's house. At Babul Arya's house she stayed for the night as Nibash proposed to marry her and asked me to discuss the matter with her family. However, she refused to marry him and she informed her parents and they came and took me back. Though the accused persons did not abuse her

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physically they forced her to stay for the night and hence her father lodged complaint against the accused.

In cross- examination PW1 stated that after filing of the complaint Nibash came to their house and told her parents that he had no bad intention and he wanted to marry her. However, he realized his mistake and felt sorry and apologized for his mistake. Accordingly, her parents decided not to proceed with the complaint against the accused persons. The accused did not do any physical harm to her

7. **PW2** Shri Dipak Barman stated that he is the complainant. He knows the accused persons. Victim is his daughter. The occurrence took place about 1 ½ years back. His daughter went to the field to fetch cow. While returning from the field she met accused Nibash Rajbongshi and Dulu Barman on the way and she went to Babul Arya's house. At Babul Arya's house she stayed for the night as Nibash proposed to marry her and asked her to discuss the matter with parents. However, she refused to marry him and informed him and he brought her back home. Though the accused persons did not abuse her physically they forced her to stay for the night and hence he lodged complaint against the accused. Ext.1 is ejajhar. He put his thumb impression in Ext.1.

In cross- examination PW2 stated that after filing of the complaint Nibash came to their house and told him that he had no bad intention and he wanted to marry his daughter. However, he realized his mistake and felt sorry and apologized for his mistake. Accordingly, he decided not to proceed with the complaint against the accused. On being asked his daughter told him that accused did not do any physical harm to her. He has no objection if the accused persons are acquitted in this case.

8. **PW3** Smti Malati Barman stated that the complainant is her husband. She know the accused persons. Victim is her daughter. The

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occurrence took place about 1 ½ years back. Her daughter went to the field to fetch cow. While returning from the field she met accused Nibash Rajbongshi and Dulu Barman on the way and she went to Babul Arya's house. At Babul Arya's house she stayed for the night as Nibash proposed to marry her and asked her to discuss the matter with parents. However, she refused to marry him and informed us and they brought her back home. Though the accused persons did not abuse her physically they forced her to stay for the night and hence her husband lodged complaint against the accused.

In cross- examination PW3 stated that after filing of the complaint Nibash came to their house and told us that he had no bad intention and he wanted to marry her daughter. However, he realized his mistake and felt sorry and apologized for his mistake. Accordingly, they decided not to proceed with the complaint against the accused. On being asked her daughter told them that accused did not do any physical harm to her. She has no objection if the accused persons are acquitted in this case.

Appreciation of evidence :

9. Prosecution examined the victim as PW1. In her evidence she has stated that on the date of occurrence while she was going to college she met the accused Nibash and Dulu on the road and along with them she went to the house of Babul. At the house of Babul, Nibash proposed her to marry and she stayed in the house of Babul for the night. During conversation she let them know that she was not going to marry and accordingly, she informed her parents and then she was brought back home. The victim also stated that the accused persons had not misbehaved or abused her physically. Further she stated that they did not force her to stay. However her parents were worried and hence they lodged complaint against the accused. In cross-examination she stated that the accused persons had no bad intention and he

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also apologized for his action and hence she is not willing to proceed against the accused persons. Prosecution examined the father and mother of the victim as PW2 and PW3. They have also deposed in similar line as PW1. In their cross examination they stated that they have no objection if the accused persons are acquitted in this case.

10. Considering all the facts and circumstances and the materials available on record I find that prosecution is not willing to proceed against the accused persons as the victim has not implicated the accused persons as to their involvement in the alleged commission of offences.

11. In view of the above I find that prosecution has failed to prove the charges u/s 366/376 IPC R/W section 4 of POCSO Act against the accused persons.

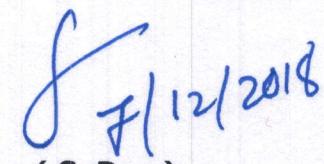
O R D E R:

12. In the result I find the accused persons not guilty under the aforesaid offences. Accordingly, they are acquitted.

13. Set them at liberty forthwith.

14. Judgment is pronounced in open Court.

15. Given under my hand and seal of this Court on this the **7th day of December/2018.**


(S. Das)
Special Judge,
Special Judge,
Dhemaji.