# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

### JUDGMENT IN SPL. (POCSO) CASE NO. 48 (DH) 2018.

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

#### The State of Assam

- Versus -

### 1. Shri Mamai Doley,

S/O Late Taduk Doley,

Vill. Mechaki Tongani,

P.S. Silapathar,

Dist.- Dhemaji (Assam)

.....Accused Person.

#### **Appearance:**

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri N. Buragohain, Advocate

.....For the Accused

Date of prosecution evidence

: 28-03-2019.

**Date of argument** 

: 28-03-2019.

**Date of Judgment** 

: 24-04-2019.

Special Judge,
Dhemaji.

### JUDGMENT

- 1. The prosecution case, in brief, is that on 23-08-2018 complainant- Shri Hem Kanta Pegu lodged an ejahar at Dambuk Patrol Post under Silapathar Police Station stating interalia that on that day i.e. on 23-08-2018 in the evening at about 7 PM while his niece-Smti Debati Pegu aged about 12 years, a student of Class-VII, went to the latrine, the accused-Mamai Doley forcibly took away her (victim) by gagging her mouth.
- 2. On receipt of the complaint, I/C, Dambuk Patrol Post,made G.D. Entry vide No. 318 dtd 23-08-2018 and forwarded the same to O/C, Silapathar Police Station for registering a case under proper section of law. On receipt of the ejahar, O/C, Silapathar Police Station registered it as Silapathar Police Station Case No. 368/2018 u/s 366 of IPC read with Sec. 8 of POCSO Act. On completion of investigation Police submitted Charge-sheet against the accused person u/s 366 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 of IPC read with Sec. 4 of POCSO Act against accused- Mamai Doley. The charges were read-over and explained to the accused to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statements of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

#### 4. Points for determination:

(1) That, on 23-08-2018 AT ABOUT 7 pm in the evening at Mechaki Tongani Gaon under Silapathar Police Station, you kidnapped/abducted Smt. Debati Pegu, a minor girl aged about 12 years from her house with intent that she might be compelled to marry

Special Judge,
Dhemaji.

you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.

- (2) That you, on the same day, time and place, you committee penetrative sexual assault on **Smti Debati Pegu**, a minor girl aged about 12 years 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** Smt. Debati Pegu (victim) stated that the complainant is her father. She knows accused Manai Doley. The incident took place in the year 2018. Accused is her close friend. They used to mix-up at home and outside. On the relevant day of occurrence, she accompanied by the accused, went to the house of Aja Doley without the knowledge of her parents. On the next day, she returned home. Her parents were worried and upset and lodged complaint before police. After returning home, she told them that she had visited the house of Aja Doley along with the accused. Accused did not physically abuse her in any manner.

Defence declined to cross-examine PW1.

7. **PW2** Shri Hem Kanta Pegu stated that he is the complainant. He knows the accused. Victim Debati Pegu is his niece. The incident took place in the year 208. On the relevant day of occurrence, his niece Debati Pegu, accompanied by the accused, went to the house of Aja Doley without their knowledge. On the next day, the victim returned home. They were worried and upset and lodged complaint before police. After returning home, the victim told them that she had visited the house of Aja Doley along with the

Special Judge,
Observation

accused. The accused did not physically abuse her in any manner. Exhibit-1 is the ejahar and Ext-1(1) is his signature.

In cross-examination PW2 stated that the complaint was filed due to misunderstanding. So, he is not willing to proceed against the accused and he has no objection if the case is ended in acquittal.

# Appreciation of evidence:

- From the discussion of the evidence on record, it appears that 8. in this case the victim girl and the complainant-Hem Kt. Pegu (father of the victim) were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that on the relevant day of occurrence, the victim Debati Pegu accompanied by the accused, went to the house of Aja Doley without the knowledge of the parents of the victim. On the next day, the victim returned home. Victim's parents worried and upset and lodged complaint before police. After returning home, the victim told her parents that she had visited the house of Aja Doley along with the accused. The accused did not physically abuse her in any manner. In cross-examination, PW2 stated that the complaint was filed due to misunderstanding and so, he is not willing to proceed against the accused and he has no objection if the case is ended in acquittal. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.
- 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. On perusal of medical report it is found that doctor on examination did not find any using of violence on the private part of the victim. 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. I find that the prosecution has totally

Special Judge,
Othernali.

failed to prove the charges u/s 366 of IPC read with sec. -4 of the POCSO Act against the accused-Mamai Doley.

- 10. In view of the above, I find the accused-**Mamai Doley** not guilty u/s 366 of the I.P.C. R/W sec. 4 of POCSO Act. Accordingly, the accused is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 24<sup>th</sup> day of April/2019.

Special dudge,