IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPECIAL (POCSO) CASE NO. 7(DH) 2017.

U/s 4 of POCSO Act/read with Sec. 366(A) IPC.

(G.R. Case No.977/16 (SLP); Silapathar P.S. Case No.359/16 u/s 366 (A) IPC)

The State of Assam

- Versus -

Shri Indra Kr. Doley @ Bhaity,

.....Accused Person

S/O Dhenuram Doley,

R/O Kachinath Gaon,

P.S. Silapathar,

Dist.- Dhemaji (Assam)

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri J. Dutta, Advocate

.....For the Accused

Dates of prosecution evidence: 28-03-2017, 12-06-2019, 24-07-17, 16-09-2017,

06-08-2018.

Date of arguments

: 04-12-2019.

Date of Judgment

: 11-12-2019.

JUDGMENT

1. The prosecution case in brief is that on 06-11-2019 complainant-Shri Phulnath Pait lodged an ejahar with Silapathar Police Station alleging interalia that on 31-10-2016 at about 11 AM while his minor daughter-Smti 'X' (real name is

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withheld) aged about 16 years was going to the Silapathar Market, the accused-Indra Doley abducted/kidnapped her from the road.

- 2. On receipt of the ejahar, Police registered a case vide Silapathar P.S. Case No. 359/2016 u/s 366(A) of IPC and started investigation. On completion of investigation police submitted Charge-sheet against the accused-Shri INdra Kr. Doley @ Bhaity u/s 366 (A) of IPC, read with Sec. 4 of POCSO Act and read with sec. 4 of Child Marriage Restricted Act.
- On receipt of the case record and on appearance of the accused, this Court cons u/s Sec. 4 of POCSO Act read with Section- 366(A) of IPC and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 7 witnesses including the I/O and M/O. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of total denial. However, defence declined to adduce evidence in support of the plea.

4. Points for determination:

- (1) That you, on 31-10-2016 at about 11 AM at Village-Natun Mising Gaon, Silapathar Town under Silapathar Police Station, committed penetrative sexual assault on **Smt.** "X", a minor girl, and thereby you committed an offence punishable u/s 4 of POCSO Act, 2012.
- (2) That you, on the same date, time and place abducted **Smti 'X'**, a minor, with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry against her will and or be forced to illicit intercourse and thereby you committed an offence punishable u/s **366(A)** of IPC.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion of Evidence:

6. **P.W-**him. Victim Smt. 'X' is his daughter. It was on 31-10-2016. On that day at about 11
AM she had gone out but did not return home. He looked her for about 2 days but

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did not find her. Then he came to know that she had gone with the accused-Indra. Then he filed the case. Police arrested the accused's parents and also rescued her daughter. The victim was in Class-X and she was about 16 years. She had failed once in Class-1 And then in Class-IX. Police gave her to him (PW1) and they seized the Birth Certificate of the victim and gave it to him. Exhibit-1 is the FIR and Ext-1(1) is her signature therein.

In cross-examination PW1 stated that she may have been about 19-20 years at that time. In the birth certificate the age has been reduced.

PW2 Shri Dimbeswar Taid stated that he knows the accused. Victim Smt. 'X' is his niece. Phulnath is his elder brother. Occurrence took place on about 10.30 AM. The accused had taken her (victim). Then her parents.

Defence declined to cross-examine PW2.

8. **PW3 Smti Krishna Pait** stated that the complainant is her father. She knows the accused. About 2 years ago (from the date of her deposition), she eloped with the accused. She stayed with the accused as husband and wife. Her father file complaint before police and police brought them to the police station. Police got her examined by Doctor. She also gave statement before Magistrate. Exhibit-2 is the said statement and Ext-2(2) is her signature therein. Presently, she is staying with her parent.

In cross-examination PW3 stated that accused is the son of his uncle. Her father detained her once in class-V and other in Class-IX. Two years had been lost for her. The case was filed due to misunderstanding.

9. **PW4 Bikram Doley** stated that the complainant-is his neighbor. He knows his (complainant) daughter Krishnawati Pait. He also knows the accused. About one year ago, the complainant told him that his daughter was missing. Later on, he came to know that the accused kidnapped the victim.

In cross-examination PW4 stated that complainant and accused are uncle and nephew in relation.

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10. **PW5 Rama Kt. Pait** stated that the complainant is his elder brother. Victim Krishnawati is his niece. Victim is the daughter of the complainant. He knows the accused. Occurrence took place about one year ago (from the date of his recording evidence). At the relevant time of occurrence, he was at Dibrugarh Medical. After coming from Medical, he came to know from his elder brother and his sister-in-law that Krishna (victim) was missing. Later on, the victim was recovered from the house of the accused.

In cross-examination PW5 stated that accused is his own nephew. Victim and accused are brother and sister.

PW6 Dr. Chandrajit Doley stated that on 16-11-2016 he examined Smti Krishnawati Pait at Silapathar Model Hospital on police requisition in connection with SLP. P.S. Case No.359/2016 on being identified by WPC-Jyotsna Das. According to the victim, she was married to the accused Indra Kr. Doley and had sexual intercourse with him. On examination, he found no injury over the body of the victim. Hymen was not present. IN his opinion, PW6 opined that there is no any evidence of any forceful sexual intercourse or violent marks on her body or private parts, and the age of the victim is 15 years 2 months. Ext-3 is the Medico-Legal Report and Ext-3(1) is his signature with seal.

In cross-examination PW6 stated that he mentioned the age on the basis of the birth certificate. Ossification test was not done.

12. **P.W-7 Shri Dilip Bania** stated that on 6-11-2016 he was at Silapathar Police Station as Second Officer. On that day, O/C, Silapathar P.S. received an ejahar from Phulnath Pait and registered a case vide P.S. Case No. 359/16 u/s 366 A IPC and entrusted him with the investigation of the case. During the course of investigation, the complainant was examined at police station. Thereafter, he visited the P.O., ie. Natun Missing Gaon. He drew the sketch map of the P.O., recorded statement of other witnesses u/s 161 Cr.P.C. During investigation, Dhaniram Doley along with the accused and the victim appeared in the police station and handed-over them to him. He recorded statement of the victim u/s 161 Cr.P.C. and got her medically examined. He arrested the accused and forwarded to judicial custody. He produced the victim before Magistrate for

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recording her statement u/s 164 Cr.P.C. He collected the medical report and 164 Statement of the victim. On completion of investigation, he submitted charge-sheet against the accused u/s 366 A of IPC read with Sec. 4 of POCSO Act and R/W Sec. 4 of Child Marriage Restraint Act.

In cross-examination PW7 stated that as per report of the Doctor the victim is aged about 18 years. He had not received the original birth certificate of age from the complainant.

Appreciation of Evidence:

- 13. From the discussion of the evidence on record it appears that the PW1 is the father of the victim. According to him the victim had gone with the accused and he lodged complaint before police and accordingly both the accused and his daughter surrendered before police. He also stated that at the time of occurrence his daughter was reading in class X. Further he stated that his daughter had failed in class I and class IX. From his cross examination PW1 stated that his daughter's age may be 19 to 20 years. Victim was examined as PW3. She stated that she had eloped with the accused and they lived together as husband and wife. In cross examination she stated that accused is related to her. She also stated that she failed in class V and class IX. So far other non-official witnesses are concerned 14.
- I have also perused the statement of victim u/s 164 Cr.PC wherein she stated that she had voluntarily gone with the accused. 15.
- On scrutiny of the evidence it appears that both PW1 and the victim father and daughter respectively stated that the victim was aged about 16 years and she had failed in two classes. Further from the evidence of MO it appears that without any ossification test the MO stated victim's age to be 15 years 2 months. Further it is in the evidence of MO that there is no evidence of sexual intercourse or violent mark on the body or private part of the victim. 16.
- So considering the various statements regarding age I am of the opinion that the victim is not below 18 years of age. On the other hand from the version of the victim it is quite clear that she had gone with the accused of her own accord.

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In view of what has been discussed above it is quite apparent that the ingredients of section 4 of the POCSO Act and section 366 A of IPC are not established in this case. Prosecution has failed to prove the charges against the accused beyond all reasonable doubt.

ORDER:

- In the result I find the accused-**Shri Indra Kr. Doley @ Bhaity** not guilty u/s 366 A of IPC R/W section 4 of POCSO Act. Accordingly, accused-**Shri Indra Kr. Doley @ Bhaity** is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.
- 20. Given under my hand and seal of this Court on this the 11th day of

(S. Das)
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