IN THE COURT OF THE SPECIAL JUDGE AT JORHAT

Present: Sri Madhurjya Narayan, AJS

Special Judge, Jorhat

SPECIAL CASE NO. 67 OF 2017 (G.R. Case No. 3204 of 2016) Teok P.S. Case No. 460 of 2016

Committing Magistrate:-

Smt. Pranita Morang, The then Sub-Divisional Judicial Magistrate [Sadar], Jorhat District

State of Assam

-Versus-

Sri Prasanta Das, Son of Late Phuleswar Das, Resident of Bhogamukh, P.S. Bhogamukh, District-Jorhat.

.... Accused

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat

For the Accused: Sri Diganta Prakash Goswami,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 366 [A] OF INDIAN PENAL CODE READ WITH SECTION 11 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 08-08-2017

Date of prosecution evidence: 29-11-2017; 15-05-2018 & 25-09-2018

Statement of Accused

 Recorded on
 : 18-06-2019

 Date of Argument
 : 02-08-2019

 Date of Judgment
 : 16-08-2019

JUDGMENT

- The prosecution story, in brief, is that on 26/10/2016, the informant Smt. Dulumoni Bora, mother of the victim girl, [hereinafter referred as (X) in order to screen her identity], lodged a written ejahar with the Teok P.S., thereby alleging inter-alia that on the same day, i.e., 26/10/2016, around 12.30 p.m., her victim daughter 'X' was waiting on the road on her way back from Teok Junior College, then the accused Sri Prasanta Das caught hold of her hand and forcefully dragged her inside his Swift Dezire vehicle. Thereafter, the victim jumped off from the vehicle, by opening the door in front of C.K.B. College, Teok.
- **2).** On receipt of the aforesaid F.I.R. by the Officer-in-charge, Teok P.S., the same was registered as Teok P.S. Case No. 460/2016 under Section 366 [A] of IPC. The Officer-in-charge, Pulibar P.S. endorsed the case to S.I. Sri Bedanta Bikash Baruah to investigate the same.
- **2 (1)** During the course of investigation, the I.O. visited the place of occurrence, prepared Sketch Map of the same, recorded statements of the witnesses and forwarded the accused Sri Prasanta Das after arresting him. He also got the statements of the victim recorded in the Court under Section 164 of Cr.P.C. Then on completion of investigation, the I.O. laid charge-sheet against accused Sri Prasanta Das to stand trial in the Court under Section 366 (A) of IPC.
- **3).** On appearance before the Court of learned Sub-Divisional Judicial Magistrate [Sadar], Jorhat, as required under the statutory provision, relevant copies to the accused person were supplied and committed the case to this Court for trial, finding the case to be exclusively triable by the Court of Sessions.
- **4).** On appearance before this Court, my learned predecessor-in-court, upon hearing the learned counsel for both sides on the point of consideration of charge and perusing the relevant materials, finding a prima-facie case under Section 366 [A] of IPC read with Section 11 of POCSO Act, 2012, framed formal charge there under against the accused person. Particulars of accusations of

above charge on being read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

- 5). Initially, the case was registered as Sessions Case No. 90 [J-J] 2017. But as this Court framed charge against the accused person U/S 11 of POCSO Act, 2012, hence the instant case has been converted to **Special Case No.** 67/2017 vide order dated 08/08/2017.
- **6).** To bring home the charge, the prosecution examined as many as **04 [four]** witnesses including the victim and her parents. Further, the prosecution side exhibited the statement of the victim [X] recorded under Section 164 of Cr.P.C. as Exhibit-3, the ejahar as Exhibit-1 and the seizure-list as Exhibit-2.
- **7).** On closure of the prosecution evidence, statement of the above named accused was recorded under Section 313 of Cr.P.C. No defence evidence was led in the instant case.
- **8).** I have heard arguments advanced by the learned counsel for both sides. I have also scrutinized the entire evidence of witnesses as well as all relevant materials including the exhibits on record.Llearned Defence Counsel Sri Diganta Prakash Goswami, argued that prosecution evidence lacks credibility and reliability. And as such, the accused be acquitted of the charge.

9). POINTS FOR DETERMINATION:-

Whether on 26/10/2016, around 12.30 p.m. at Gowal Gaon Tin-Ali, under Teok P.S., the above named accused person:

- [i] kidnapped victim 'X', daughter of the informant Smt. Dulumoni Bora with intent that she may be forced/seduced to illicit intercourse with another person?
- [ii] uttered slang language to the victim 'X', daughter of the aforenamed informant and thereby committed an offence punishable under Section 11 of POCSO Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

- **10). PW-2/victim 'X'** deposed that at the time of the incident, she was on her way back from Teok Junior College. Then on the road, she met one of her classmates, namely, Sri Jyotish Das and was talking with him. That at that time, the accused person came in his vehicle and rebuked her for talking with aforesaid Sri Jyotish Das. That accused person directed her to sit in his vehicle and out of fear, she complied and before reaching her house, accused person dropped her on the road and asked her to take another vehicle to her house. That the accused person left her at Jagdowar, where she started crying. That many people gathered at the place of occurrence and she did not witness the accused person where he had gone after giving her the bag which was kept in his vehicle. That someone informed police about the incident and police recovered her from the said place, where her mother also arrived after being informed by someone over phone.
- **10 (i).** During cross-examination, PW-2 stated that accused person used to take her to her college as per direction of her parents. She also stated that the accused person did not kidnap her on the date of the incident.
- 11). PW-1/Smt. Dulumoni Bora is the informant and mother of the victim/PW-2. She deposed that the accused person had one Swift Dezire vehicle and sometimes, prior to the incident, he used to drop the victim on the way back from college. That on the day of the incident, one student of her college informed PW-1 over phone that her daughter/PW-2 met with an accident. That she then proceeded towards the alleged place of occurrence at C.K.B. College, Teok, and on the way, she met the accused person on the way, who was also going to the place of incident and he told her that the victim met with an accident. That she got into the vehicle of the accused person and went to the place of occurrence, where she saw a gathering. That she lodged the ejahar [Exhibit-1] against the accused person alleging that he had kidnapped her daughter/PW-2.

- **11 (i).** During cross-examination, PW-1 stated that she knew the accused person prior to the incident and asked him to drop her daughter/PW-2 in his vehicle to the college and also asked him to restrain the victim/PW-2, if she talks with some other boy. That she has put her signature on the ejahar [Exhibit-1] as told by the people gathered there and she did not see the contents of the F.I.R. That the accused person did not kidnap her daughter/PW-2 and she lodged the ejahar [Exhibit-1] against the accused person due to misunderstanding.
- **PW-3/Sri Amrit Bora** is the father of the victim/PW-2 and husband of PW-1. He deposed that accused person sometime used to drop his daughter/PW-2 on the way from college and vice-versa. That on the day of the incident, the victim was talking with a boy on the way from her college. That the accused person directed her to sit in his vehicle and instead of taking her home in the usual way, he took a different path, for which, his daughter/PW-2 got scared and she got down from the vehicle. That the students of the college informed police over phone and accordingly police arrived at the place of occurrence and took the victim to the police station and thereafter she was produced before a doctor as she sustained minor injury while getting down from the vehicle.
- **12 (i).** During cross-examination, PW-3 stated that he asked the accused person to keep an eye on his daughter regarding her study. That on the day of the incident, the accused person was taking the victim back to their house as he found her talking with a boy by taking a different path to their house. He also stated that accused person did not kidnap his daughter/PW-2 and case was lodged due to misunderstanding.
- **13). PW-4/Sri Parag Borah** deposed that he heard that the accused person took the victim/PW-2 with him in his vehicle, when she was on her way back from the school. That he did not meet the victim after the incident. During cross-examination, PW-4 stated that he heard that the accused person did not kidnap the victim/PW-2.

- **14).** Prosecution did not examine any other witnesses in support of its case. As per the ejahar [Exhibit-1], the accused person kidnapped the victim/PW-2 on the date of the incident. However, the informant as PW-1 deposed that accused person did not kidnap the victim/PW-2 and that the ejahar was lodged due to misunderstanding. The victim herself as PW-2 deposed that accused did not kidnap her on the day of the incident. PW-3, who is the father of the victim, also deposed that the case was lodged due to misunderstanding. Moreover, it reveals from the evidence of the witnesses discussed aforesaid, that the parents of the victim asked the accused person to keep an eye on their daughter/PW-2 and he also used to drop her at home on her way from college. That on the relevant day, the accused person on finding the victim/PW-2 talking with another boy, took her in his vehicle to drop her. The evidence on record as discussed aforesaid, failed to make out any case against the accused person.
- **15).** In the light of the discussions so made hereinbefore and taking the evidence on record in its entirety, it is found that the prosecution failed to prove its case against the accused person beyond reasonable doubt. Accordingly, he is found not guilty of the charges so brought against him.
- **16).** In the result, accused **Sri Prasanta Das** is <u>acquitted</u> of the charges under Section 366 [A] of IPC read with Section 11 of POCSO Act, 2012, levelled against him and he is set at liberty forthwith.
- **17).** Accused is on bail. The bail bond of accused is extended for another **06** [six] months from today as per provision of Section 437-A Cr.P.C.
- **18).** Given under my hand and seal of this Court on this **16th** day of **August 2019**.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Smt. Dulumoni Bora, mother of victim/PW-2-cum-
	informant of the case.
PW-2	Victim girl.
PW-3	Sri Amrit Bora, father of victim.
PW-4	Sri Parag Bora, neighbour.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Ejahar
Exhibit-2	Seizure-list
Exhibit-3	Statement of the victim under Section 164 Cr.P.C.

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)