IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI

SONITPUR, ASSAM

Spl. (POCSO) Case No. 12/2019

u/s Sec. 363 IPC r/w Sec. 4 of POCSO Act, 2012

State of Assam

-VS-

Sri Natho Nayak

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Smti J. Kalita, learned Addl. P.P.

For the defence

: Mr. P. Hazarika, learned Legal Aid Counsel

Date of recording Evidence: 01.07.2019.

Date of Argument

: 01.07.2019.

Date of Judgment

: 01.07.2019.

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 06.09.2018 the informant, namely, Md Basat Ali lodged an FIR with the OC, Biswanath Chariali PS stating inter alia that on his 13-year-old daughter has been missing from his house since 01.09.2018. Though he had searched for her, he could not gather any information on her whereabouts.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused u/s 366 IPC, r/w Section 4 of POCSO Act.
- 3. The accused in due course was produced from custody to face trial. As the accused expressed his inability to engage a counsel of his choice to defend him, the learned legal aid counsel was appointed to defend the accused at the expense of the State. Copies of the relevant documents were furnished to the accused and upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed offences u/s 363 IPC r/w Section 4 of POCSO Act, 2012, charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.

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4. During trial, the prosecution examined the informant and the alleged victim as PW 1 and PW 2 respectively. Looking into their evidence, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the evidence on record, most particularly, the evidence of the alleged victim-PW 2, the prosecution evidence was closed. As no incriminating evidence was found against the accused person, his examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

Points for determination



- i) Whether the accused person on the day of the alleged occurrence kidnapped the said victim, who is a minor under the age of 18 years from the lawful guardianship of her father- the informant?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant, Md. Basat Ali. He stated that the accused is the husband of his elder daughter. According to him, about 10 months back, after returning to his house from work, he could not find his 13-year-old-daughter (name is withheld) in his house. After a search been made, she could not be traced out for which he lodged the FIR. On the next day, his elder daughter, Jalmali Khatoon, who is the wife of the accused informed him over phone that the victim had gone to their house along with her husband and she was there. He stated that the accused had taken the victim to their house for an outing. He further stated that as the police had found the victim in the house of the accused, they lodged the charge-sheet against him. He proved his FIR as Ext. 1, wherein he had put his thumb impression. In his cross-examination, he stated that the victim had gone with the accused to his house at her insistence and the accused is innocent.
- 6. PW 2, the alleged victim stated that on the day of the said occurrence, she had gone with the accused, who is her brother-in-law to his house without informing anyone in their house. She stated that as her father did not find her in the house, he lodged the FIR for her missing. She further stated that her father had lodged the case out of misunderstanding. She also stated that the accused did not misbehave her. She further stated that she along with her sister and the accused then went to Benglaore for an outing and after their return, the police had apprehended the accused. In her cross examination she stated that the accused is innocent. Moreover, in the statement of the victim recorded u/s 164 CrPC- Ext.2, we find no implication of the accused with the offences alleged.

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7. Thus from the evidence of both these vital witnesses, we find no material against the accused to convict him on the offences charged against him. The prosecution has failed to prove its case. As such I acquit the accused person from the offences charged against him and set him liberty forthwith. The jail authority be informed to release him, if he is not required in any other case. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 1st day of July, 2019.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Addi Sessions Adding Aiswadam Charleit, Control



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Md. Basat Ali

PW2- Victim



Exhibits proved by the prosecution witnesses:

Ext.1- FIR

Ext.2- Statement of the victim u/s 164 CrPC

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addi. Sessions Judge biswanati: Onanati, Sonitpur