IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 33(DH)/ 2018.

U/S 366/376 of IPC R/W Sec 4 of POCSO Act

The State of Assam

- Versus -

Shri Hira Chutia,

S/O Lt. Dambaru Chutia,

R/O Ghatapara Itakhuli Gaon,

P.S. Dhakuakhana,

Dist.- Dhemaji.

.....Accused Person

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri G. Handique, AdvocateFor the Accused

Date of prosecution evidence : 15-07-2019.

Date of argument

: 15-07-2019.

Date of Judgment

: 24-07-2019.

JUDGMENT

Brief Facts:

- 1. The prosecution case, in brief, is that on 01-03-2018 complainant-Smt. 'Dipti Chowkham lodged an ejahar at Dhemaji Police Station alleging interalia that on 20-02-2018 at about 8.30 AM in the morning while her minor daughter-Smti 'X' (real name is withheld) aged about 16 years, was going to Dhemaji Girls College, the accused-Hira Chutia took away her from the road of Dhemaji Town and kept her confined in an unknown place for 8/9 days. Upon search, they came to know that the victim girl had been kept in the house of the accused.
- 2. On receipt of the ejahar, Police registered a case vide Dhemaji P.S. Case No. 81/2018 u/s 366(A) of IPC. Police started investigation and on completion of investigation submitted Charge-sheet against the accused Hira Chutia u/s 366/376 of IPC showing him as absconder.
- 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 of IPC read with 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 2 witnesses. At the closure of the prosecution evidence statement of the accused person 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 20-02-2018 at about 8.30 AM at Dhemaji Town under Dhemaji Police Station, you kidnapped/abducted Smt. 'X', a minor girl aged about 17 years with intent that she might be compelled to marry 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, on the same day at same time and thereafter you committed rape on Smti 'X', a minor girl having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s **376** of IPC.

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- (3) That you, on the same day at same time and thereafter committed penetrative sexual assault on Smt. 'X', a minor girl aged about 17 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 of evidence:

6. **PW1 Smt. 'X' (victim)** stated that complainant is her mother. She knows the accused-Hira Chutia. The incident took place about one year back (from the date of her recording evidence). She had love affairs with the accused. One day she eloped with the accused without the knowledge of her parents. Her parents were upset and lodged complaint before the Police. However, due to some reasons she decided not to stay with the accused and she came back home. Since she had love affairs with the accused, she does not want to proceed against the accused and her parents also agreed not to proceed against him (accused).

In cross-examination PW1 stated that she has no objection if the accused is acquitted in this case.

PW2 Smti Dipti Chowkham stated that she is the complainant. She knows the accused. Victim Smt. 'X' is her daughter. The incident took place about one year back (from the date of her deposition). Her daughter had love affairs with the accused. One day she (victim) eloped with the accused without their knowledge. They were very upset and lodged complaint before the Police. However, her daughter (victim) came back home and she stated that she had realized her mistake and also stated that the accused did not destroy her chastity. At the time of occurrence, she (victim) was aged about 19 years. Exhibit-1 is the ejahar and Ext-1(1) is her signature.

In cross-examination PW1 stated that she has no objection if the accused is acquitted in this case.

Appreciation of evidence:

8. From the discussion of the evidence on record, it appears that in this case the victim Smt. 'X' and the complainant-Smt Dipti Chowkham, who is the mother

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of the victim, were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the victim (PW1) had love affairs with the accused and one day the victim eloped with the accused without the knowledge of her parents for which they were very upset and lodged complaint against the accused before police. However, the victim (PW1) came back home and she stated that she had realized her mistake and she further stated that the accused did not destroy her chastity. The victim also stated that at the relevant time of accident, she was aged about 19 years. In cross-examination both the P.Ws. stated that they have no objection if the accused is acquitted in this case. 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. This is a case of no evidence. 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 person. I find that the prosecution has totally failed to prove the charges u/s 366/376 of IPC read with sec. 4 of POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Hira Chutia** not guilty u/s 366/376 of the I.P.C. read with section- 4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 24th day of July/2019.

S. Das

Special Judge, Dhemaji.