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

SONITPUR, ASSAM

Spl. (POCSO) Case No. 16/2018

u/s 363 IPC r/w Section 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Asabuddin Ali

..... Accused person

Present:

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

Special Judge cum Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

Advocates Appeared:-

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

For the defence

: Mr. P. Hazarika, learned Advocate

Date of recording Evidence: 15.11.2019

Date of Argument

: 15.11.2019.

Date of Judgment

: 15.11.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 23.01.2018, the informant namely, Sri Chitra Prasad Bhuyan lodged an FIR with the O/C, Gingia Police Station stating inter alia that on the previous day at about 9 a.m., he left his 15-year-old daughter (name is withheld) at Tinisuti Sankardev Jatiya Vidyalaya to attend Swaraswati Puja. However, later he found that his daughter remained traceless since then.
- 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 363 IPC, r/w 8 of POCSO Act. 2012.
- 3. The accused in due course appeared before this court to face trial. The copies of the relevant documents was furnished to him. 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 8 of the POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.
- 4. During trial, the prosecution examined the informant and the alleged victim as PW 1 and PW 2 respectively. Looking into the evidence as adduced by both these vital witnesses, the

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prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the evidence on record, more particularly the evidence of the victim- PW 2, the prosecution evidence was closed. As no incriminating evidence was found against the accused, 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 on the day of the alleged occurrence kidnapped the said victim, who is a minor girl from lawful guardianship of her father- the informant?
- ii. Whether the accused on the day of the alleged occurrence committed sexual assault on the said minor victim?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant, Chitra Prasad Bhuyan. He stated that in the month of January, 2018, on the day of Swaraswati Puja, he left his daughter at her school. But when about 1 p.m. on that day, he went to bring her back, he could not find in her school. After a search was made, she could not be traced out. He thereafter, lodged the FIR. In the evening hours of that day, police informed him over phone that they had found her daughter at Mahabhoirab. Later, the police recovered the girl and handed her over to him. He stated that his daughter had told him that she had committed a mistake. He testified that his daughter was 18 years old at that relevant time. He proved his FIR as Ext. 1. In his cross, he stated that his daughter had gone with the accused on her own wish and she had told him that the accused did not misbehave with her.
- 6. PW 2 is the victim. She stated that on the day of the said occurrence, she without informing anyone at her house, went with the accused to Tezpur. She had love affair with the accused and had accompanied him on her own wish. She proved her statement recorded u/s 164 CrPC as Ext. 2 and also stated that the accused did not misbehave her.
- 7. Thus from the evidence of both these vital witnesses, we do not find any 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 from the offences charged against him and set him at liberty forthwith. His bail bond stands discharged. The provision of Sec. 437-A CrPC is not complied with after taking note of the materials on record. 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 15th day of November, 2019.

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

Addl. Sessions Judge Biswanath Chariali, Sonitpur

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Chitra Prasad Bhuyan

PW2- Victim



Exhibits proved by the prosecution witnesses:

Ext.1- FIR

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

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addl. Sessions Judga Biswanath Chariali, Sonitput