

IN THE COURT OF THE SPECIAL JUDGE

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CHIRANG, KAJALGAON.

# Special (P) Case No. 9(D)/2019

U/S 366/376(1) IPC R/W Section 6 of POCSO Act.

State of Assam *Vs.*Md. Ismail Ali

..... Accused

**PRESENT:** 

Shri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

### ADVOCATES APPEARED:

For the State

: Shri D. Das, Ld. Public Prosecutor

For the accused

: Shri M. Islam, Ld. Advocate

Date of evidence

: 11.06.19, 24.07.19

Date of Argument

: 31.07.2019

Date of Judgment

: 31.07.2019

#### JUDGMENT

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1. The prosecution case, in brief, is that on 24.01.2019, the informant Md. Hamed Ali lodged an FIR before O/C of Dhaligaon Police Station alleging that on 14.01.2019, at about 10.30 PM, accused Ismail Ali kidnapped his 17 years old daughter Miss 'X' (name is withheld) from his house. After searching her in different places, she was recovered on 19.01.2019. Then on 22.01.2019, at evening hours, the accused was caught red handed by the informant and others when he came to the house of the informant and again tried to kidnap the victim. The matter was informed to the family members of the accused but as none from the family of the accused came to the house of the informant, the matter was informed to the police and on 23.01.2019 in the evening, the police came to the house of the informant and took the accused to the police station.

- 2. After receiving the FIR, the O/C of Dhaligaon P.S. registered a case being numbered as Dhaligaon P.S. Case No. 14/2019 U/S 365 IPC and entrusted A.S.I. Nur Hussain Khan to take pre-step and S.I. Surajit Sarkar was entrusted to complete the investigation of the case. Accordingly, the Investigating Officer arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C, collected the medical report and after completion of investigation, S.I. Surajit Sarkar submitted charge-sheet against the accused Ismail Ali U/S 365/376 IPC R/W Section 6 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused person was produced from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, formal charge U/S 366/376(1) IPC read with Section 6 of POCSO Act was framed against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail after recording evidence of victim.
- In support of the case prosecution side examined as many as 4
   (four) witnesses.

Following witnesses were examined:-

(2) Md. Hamed Ali (Informant) as PW 2

(3) Dr. Kukumoni Basumatary (M.O.) as PW 3

(1) Victim Miss 'X' (name is withheld) as PW 1

(4) A.S.I. Nur Hussain Khan (I.O.) as PW 4

Considering the evidence of material witnesses, learned P.P. prayed to close the evidence. I have also found that further evidence would not establish the case against the present accused for which further evidence was closed.

4. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.1. FIR was exhibited as Ext. 2. Medical report was exhibited as Ext.3. Extract

copy of Dhaligaon P.S. G.D. Entry No. 608 dated 23.01.2019 was exhibited as Ext.4. Sketch map was exhibited as Ext.5 and charge-sheet was exhibited as Ext.6.

- 5. Defence plea is of total denial. Statement of accused person was recorded u/s 313 Cr.P.C. Defence adduced no evidence.
- 6. Heard argument from both sides. I have perused the entire evidence on record. I have also considered the statement of the accused recorded u/s 313 Cr.P.C.

# 7. Now points for consideration:-

For the offence U/S 366 of IPC

1. Whether on 14.01.2019, at about 10.30 p.m., at village Hashraobari under Dhaligaon P.S., the accused kidnapped Miss 'X' (name is withheld), minor daughter of the informant with intent to seduce her for illicit intercourse?

For the offence U/S 376(1) of IPC

2. Whether on the same date, time and place and after 14.01.19, at different places, the accused committed rape upon Miss 'X' (name is withheld), minor daughter of the informant?

For the offence U/S 6 of POCSO Act

3. Whether on the same date, time and place and after 14.01.19, the accused committed aggravated penetrative sexual assault upon Miss 'X' (name is withheld), minor daughter of the informant?

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# **DISCUSSION, DECISION AND REASONS THEREFOR:-**

- 8. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned all points simultaneously for the sake of convenience.
- 9. The material witness victim was examined as PW 1. It is revealed from her evidence that there was a love affair between her and accused. On the date of occurrence, at about 8 PM, she along with accused went to Dhubri in a Maruti vehicle. They stayed few days thereon. After that she was taken by her brother. The victim clearly stated that during her stay along with the accused, no physical relationship took place. In this regard, she exhibited her earlier statement recorded U/S 164 Cr.P.C as Ext.1 in which she had stated that accused committed sexual intercourse with her. Said fact was denied by victim in her later deposition. According to victim, her age was above 18 years and she fled away with the accused.
- deposed in the same line as stated by victim. According to him, at the time of occurrence, age of the victim was about 18 to 19 years and she was reading in Class-IX. He also deposed that victim fled away with the accused and after knowing the fact that both victim and accused were residing at Dhubri, she was recovered from Dhubri. This witness also clearly stated that victim did not state anything about their physical relationship. According to him, no physical relationship took place in between the accused and victim. This witness in his cross-examination confirmed the fact that due to love affair, victim eloped with the accused but he had no intention to accept the accused as his son-in-law for which he lodged the case. This witness stated that in school certificate actual age of the victim was not mentioned. According to this witness, actual age of the victim was above 18 years.
- 11. PW 3 is the Medial Officer, who examined the victim. She deposed that on 25.01.19, she was working as Medical & Health Officer-1 at JSB Civil Hospital, Kajalgaon. On that day, at about 11.20 a.m., she examined Miss 'X' (name is withheld), aged about 17 years, D/O Hamed Ali of village

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Hashraobari, P.S. Dhaligaon in connection with Dhaligaon P.S. Case No. 14/19 U/S 365 IPC, who was brought by Hafeja Khatun and identified by WHG Ranjita Basumatary.

There was history of sexual assault on 15.01.19 in Dhubri district.

On examination, she found the following:-

# Physical examination:-

- (i) Height 149 cm (ii) Chest girth (at nipple line 78 cm,
- (iii) Abdomen girth (at Umbilicus) 72 cm, (iv) Teeth 7/7, 7/7.

Scalp hairs - present.

Axillary hairs - present.

Pubic hairs - present.

Breasts - moderately developed.

History of puberty -

Menarche – Five years back.

Menstrual cycle - regular.

L.M.P. - 20.12.18

General examination –

Genital organs and vulva - No abnormality detected.

Hymen - ruptured.

Vagina, cervix uterus - No abnormality detected.

No injury found on her body or private parts.

Vaginal swab for spermatozoa – not seen.

General mental condition -

- (a) Co-operation and behavior Conscious and well oriented.
- (b) Intelligence and memory Intact.
- (c) Gait Normal.

X-ray - Right wrist - Ulnar and radial physis (growth plate

absent).

Special Judge Chirang, Kajalgaon <u>Right elbow joint</u> – External epicondyle completely fused. Internal epicondyle completely fused. Olecrenon fused. Trachea fused. Head of radius fused.

<u>Pelvic bone</u> – Iliac crest, anterior inferior iliac spine, pubic symphysis, ischeal, tuberosity all appeared on process of fusion.

<u>Hip joint</u> – Head, appeared and fuses. Greater trochanter and lesser trochanter appeared and fused.

Vaginal swab test for spermatozoa not seen.

Pregnancy test - Negative.

According to the Medical Officer, no any injury mark was seen on her private parts or body. The age of the victim is 18 years old but below 20 years from X-ray report but it could not be ascertained whether she was raped or not.

PW 4 is the I.O., who investigated the case. He deposed that 12. on 23.01.2019, he was serving as ASI of Police at Dhaligaon P.S. On that day, at about 4.50 p.m., concerned O.C. got information over phone that present accused already took the daughter of Hamid Ali and after that he again came to the house of Hamid Ali to take his daughter to his home. Thereafter, O.C. entrusted him for taking pre-step of investigation. Then he proceeded to the house of the informant Hamid Ali after making Dhaligaon P.S. GD Entry No. 608 dated 23.01.19 and brought the accused to police station, examined him medically at hospital and on next day, he examined the victim, collected the Photostat copy of L.P. School certificate of victim issued by Headmaster Hashraobari L.P. School from Hatipota M.E. School. According to said school certificate, date of birth of the victim is 20.10.2002. He seized the school certificate, sent the victim to JSB Civil Hospital, Kajalgaon for medical examination and to the Court for recording her statement U/S 164 CrPC, recorded the statement of the witnesses, drew sketch map of the place of occurrence, arrested the accused and after completion of pre-step, he handed over the case diary to O.C. Later on, S.I. Surajit Sarkar submitted formal charge-sheet against the accused Ismail Ali for the offence U/s 365/376 IPC

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R/W Section 6 of POCSO Act. During cross, he deposed that he met 15/16 persons in the house of the informant but he did not examine them. He did not visit Dhubri. He did not inquire about the fact how date of birth was inserted in the Admission Register by the Headmaster. He collected the copy of L.P. School Certificate from Hatipota M.E. School but he did not visit Hashraobari L.P. School though certificate was issued by Headmaster, Hashraobari L.P. School. He also did not collect the original L.P. School Certificate of the victim.

After going through the entire evidence on record, particularly 13. evidence of victim and informant, it is found that age of the victim was about 18 years which fact is also revealed from the medical evidence. The PW 3 also stated that age of the victim is 18 years but below 20 years. So, at the time of occurrence, victim was major. It is also found that initially the victim fled away with the accused and stayed at Dhubri. The informant and his family members recovered her. At that moment, no case was filed. According to I.O., on 23.01.19, according to the direction of then O.C., he proceeded to the house of the informant and found the accused thereon. It was informed to police on that day that already victim was taken by the accused and after that on 23.01.19 he again came to the house of the informant to take back the victim along with him. So, on 23.01.19, no any incident took place regarding taking of victim by the accused. The initial incident of taking or elopement of victim took place two days prior to the filing of the FIR. As there was consent on the part of the victim and informant was aware of the fact that there was love affair between the accused and victim for which he did not lodge any FIR immediately after the elopement. It is also revealed from the evidence of the informant that age of the victim was 18 years. Victim also supported this fact. Medical evidence also corroborated the age stated by informant. No any school certificate was exhibited though PW 4 collected Photostat copy of the L.P. School certificate of the victim. So, Photostat copy of said certificate has no any evidentiary value. The I.O. categorically stated that he did not take any step to collect the original certificate issued by Headmaster of Hashraobari L.P. School in which victim was first admitted. Considering the evidence of victim and informant and medical evidence, in my view, there is no case under any Section of POCSO Act as well as Indian Penal Code because a major girl

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went with accused according to her own will and they stayed in a place where no physical relationship took place between them as revealed from the evidence on record. After going through the entire evidence on record, it is not proved that accused took the victim. So, main ingredient of kidnapping is also missing. So, there is no case against the accused to book him under the above mentioned Sections. The points mentioned above are remained as not proved. Accused is not found guilty.

#### ORDER

- 14. Prosecution miserably failed to prove the case U/S 366/376(1) IPC read with Section 6 of POCSO Act against accused Ismail Ali. Accused is acquitted and set at liberty. His bail bond is cancelled.
- 15. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.

Given under my sign and seal of this Court on this the  ${\it 31}^{\it st}$  day of  ${\it July, 2019}$ , at Kajalgaon, Chirang.

Dictated and corrected by me,

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## <u>APPENDIX</u>

## Prosecution witness:

PW 1 - Victim Miss 'X' (name is withheld)

PW 2 – Md. Hamed Ali (Informant)

PW 3 - Dr. Kukumoni Basumatary (M.O.)

PW 4 – A.S.I. Nur Hussain Khan (I.O.)

## Exhibit (Prosecution):

Ext-1 Statement of the victim U/S 164 Cr.P.C.

Ext-2 FIR

Ext-3 Medical report

Ext-4 Extract copy of Dhaligaon P.S. G.D. Entry No. 608 dated 23.01.2019

Ext-5 Sketch map

Ext-6 Charge-sheet

# Material Exhibit (Prosecution):

Nil.

## **Defence Witness:**

Nil.

## **Defence Exhibit**:

Nil.

(D.J. Mahanta) /
Special Vydge,
Chir Chirang