### IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

# POCSO Case No. 40/2019 U/S 366/376(2)(i) IPC r/w Section 6 of the POCSO Act.

State of Assam

-VS-

Sri Anil Biswas

S/o Sri Nimai Biswas

R/o Village- No. 1 Bangalbori

P.S. – Jagiroad

District – Morigaon, Assam. ..... Accused

Date of Charge : 11.02.2020.

Date of Evidence : 07.03.2020.

Date of Argument : 07.03.2020.

Date of Judgment : 07.03.2020.

### Appearance for the Parties

Advocate for the State : Mr. A. Kalam, Ld. Special Public Prosecutor.

Advocate for the Accused : Mr. U. C. Roy, Ld. Advocate.

#### JUDGMENT

Prosecution case in brief is that on 11.10.2017, the informant Sri Amal Biswas lodged a complaint before learned CJM, Morigaon alleging interalia that on 22.05.2017, at day time at about 12 O'clock, when he was not present in his house and other family members were busy in their household works, the accused persons named in the complaint came to his house in motorcycle and accused Sri Anil Biswas with the help of other accused

kidnapped his minor daughter, the victim 'X' (name withheld), aged about 13 years from the courtyard of his house. It is also alleged that after kidnapping the victim girl was kept confined at unknown place and accused Anil Biswas had committed rape upon the victim 'X'.

- On receipt of the complaint, the same was forwarded to the Officer-in-Charge, Jagiroad Police Station for registration of a case, and accordingly, Jagiroad PS Case No. 428/2017 u/s 366(A) IPC r/w Section 3/4 of the POCSO Act was registered and investigated into. During investigation, on 04.01.2019 statement of the victim was recorded u/s 164 Cr.P.C. The victim was also forwarded for medical examination but she refused to undergo medical examination. On completion of investigation, the Investigating Officer (I/O) submitted charge sheet against the accused Sri Anil Biswas only for trial u/s 363 IPC r/w Section 4 of the POCSO Act, 2012 r/w Section 10/11 of the Protection of Child Marriage Act by showing him as absconder. The other accused persons as named in the FIR were not sent up for trial due to lack of evidence against them.
- On appearance of accused Anil Biswas he was allowed to go on bail and after furnishing copies of relevant papers, vide order dated 11.02.2020, upon hearing both the sides, charges u/s 366/376(2)(i) IPC r/w Section 6 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty.
- **4.** During trial, prosecution side has examined only two witnesses only i.e. the informant and the victim. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with. I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. U. C. Roy, learned defence Counsel and gone through the evidence on record. I have considered the submission of both the sides.

#### **POINTS FOR DETERMINATION ARE:**

- **6.** (I) What was the age of the victim on 22.05.2017?
  - (II) Whether on 22.05.2017, the accused has kidnapped/abducted the victim to his house? If yes, what was the intention of the accused?
  - (III) Whether on 22.05.2017 or thereafter, the victim 'X' was subjected to aggravated penetrative sexual assault/rape by the accused in his house?

# **DISCUSSION, DECISION AND REASONS THEREOF**

- 7. PW-1, Sri Amal Biswas, the informant as well as the father of the victim 'X' in his evidence deposed that at the time of incident, the victim 'X' was aged about 16 years and was a student of class VIII. He has forgotten the date of birth of his daughter. On 22.05.2017, at about 12 noon, VDP Dipak Patar informed him that his daughter was missing. On knowing this, he returned home to search his daughter but did not find his daughter. On this, after 5-6 months, he lodged the compliant through court. Exbt. 1 is his COmplaint. After about a year days, his daughter and accused Anil returned to their house. Police was informed and they were taken to Jagiroad PS. Police handed the victim to him. She did not state anything about her stay of one year. After staying for about 3 months, his daughter again went with the accused. Presently she is residing with the accused at his house without performing social marriage. In his cross-examination by defence, PW 1 stated that he has not submitted any age proof document in court. He had stated the age on assumption. He denied the suggestion that at the time of occurrence his daughter was aged above 18 years and as such, he had withheld the age proof documents of his daughter. He has no knowledge about performing marriage between the accused and his daughter. Presently, they have compromised the matter and he will accept their relationship subject to the condition that accused shall keep his daughter happily. He has no objection in acquittal of the accused from this case.
- **8.** PW-2, the victim 'X' in her evidence deposed that at the time of incident, she was aged about 18 years and was a student of class IX. She has forgotten her date of birth. On 22.05.2017, at about 3 PM, having love affairs

with the accused, she eloped with him without informing her parents. Accused took her to Mumbai and they stayed in his relative's house for about year. After return to the house of accused, police brought her to Jagiroad PS. Police also took her for medical examination and brought to Court for recording her statement. She had given her statement in Court. Exbt. 2 is her statement. Exbt. 2(1) is her signatures. From court, she went with her parents. After 10 days, she came back to the house of accused Anil and performed marriage in the house of maternal uncle of accused and now living with her husband. Presently, she is carrying 9 months pregnancy. In her cross-examination by defence, she stated that she had love affairs with accused Anil Biswas. He did not use force in taking her to Mumbai. They stayed there on her consent. Accused is mason by profession and her father is businessman. Therefore, he did not like the accused and hence he filed the case without asking her. She prays for acquittal of the accused.

- **9.** Basing on the above evidence, let me decide the points formulated. So far age of the victim is concerned, it has been revealed from the evidence of the victim claimed that, at the time of occurrence she was aged about 18 years. However father of the victim though stated that at that time victim as aged about 16 years, but in his cross-examination, he admitted that he stated the age on assumption. Admittedly no document was proved by prosecution age. Medical examination was refused by the victim. As such, it is presumed that at the time of incident, the age of the victim above 18 years.
- deposed nothing against the accused involving him with the alleged offence of kidnapping and committing rape upon her by the accused. The victim in her evidence-in-chief clearly stated that having love affairs with the accused, she eloped with him without informing her parents and stayed at Mumbai for about a year. There is evidence that the victim eloped with accused on 3 occasions and lastly performed marriage with him and residing at her matrimonial home. Presently, she is carrying 9 months pregnancy. In her cross-examination, the victim admitted that accused did not use force in taking her to Mumbai and that Pocso Case No. 40/2019

she stayed there on her consent. PW 1 in his evidence admitted that after recovery, the victim did not tell him anything about her stay with accused. There is no evidence of use of force or any misbehave by the accused on the victim.

- **11.** From the above evidence as discussed, it is clear that there is no material whatsoever regarding abduction or commission of rape by the accused upon the victim 'X'. The victim being major in age, offence under Pocso Act is not applicable in this case.
- Considering above discussion, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 366/376(2)(i) IPC and Section 6 of the POCSO Act against the accused Anil Biswas. As such, accused Anil Biswas is acquitted from the charges U/S 366/376(2)(i) IPC and Section 6 of POCSO Act, 2012 and set at liberty forthwith.
- **13.** The bail bond executed by accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- **14.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **15.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **16.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 7<sup>th</sup> day of March, 2020 at Morigaon.

Special Judge, Morigaon, Assam