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

#### SONITPUR, ASSAM

# Spl. POCSO Case No. 15/2016

U/S 366/376 IPC & Section 4 of the POCSO Act, 2012

State of Assam

-VS-

Sri Sun Bhaity Das

..... Accused person

Present:

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

Additional Sessions Judge, FTC,

Special Judge,

Biswanath Chariali, Sonitpur.

### Advocates Appeared:-

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

For the defence

: Mr. D.K. Borah, learned Advocate

Dates of recording Evidence: 24.01.2020 & 27.01.2020.

Date of Argument

: 27.01.2020.

Date of Judgment

: 27.01.2020.

#### **JUDGMENT**

- 1. The prosecution case in brief is that on 18.09.2016 the informant namely Smti Tulu Borah lodged an FIR with the OC, Biswanath Chariali Police Station stating inter alia that on 13.09.2016 at about 9 AM after returning to her house, she found her daughter aged about 15 years missing. After a search, she could learn that the accused had eloped the victim and has kept her in his house. When approached, the guardians of the accused though promised to send her back, they did not return her.
- investigation, the police submitted charge sheet against the accused person u/s 366 IPC and r/w Section 4 of POCSO Act.
- 3. The accused persons in due course, appeared before this court to face trial. The copies of the relevant documents were furnished to him. Taking note of the materials on record and upon hearing both the sides on the point of charge, the charges u/s 366/376 IPC/Section 4 of POCSO Act, 2012 were framed against the accused, which on being read over and explained, the accused pleaded not guilty.

Jalle Jalle

4. During trial, the prosecution examined the informant as PW 1 and the victim as PW 2. Looking into the evidence of these two vital witnesses, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the materials on record and the evidence that had emanated, 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 abducted the said victim with intent that she may be forced to illicit intercourse or knowing it to be likely that she will be forced to illicit intercourse?
- ii. Whether the accused on the day of the alleged occurrence committed rape on the said victim?
- iii. 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, Smti Tulu Bora. She stated that the incident took place about 3/4 years back. According to her, her daughter fled away with the accused when they were not at home for which she lodged the FIR. She stated that her daughter's age was 18 years at that relevant time and later, she was married to the accused. Now they have a daughter out of their wedlock. She proved her FIR as Ext. 1.
- 6. PW 2 is the victim. She stated that about four years back as she had love affair with the accused, she eloped with the accused without informing any one at home, for which her mother had lodged the FIR. Later police had recovered her. According to her, the accused is innocent and she had gone with the accused on her own wish. She also stated that the accused person did not misbehave her. She proved her statement recorded u/s 164 CrPC as Ext. 2. In her cross, she stated that her mother had lodged the 'ejahar' out of misunderstanding.
- 7. Thus from the evidence of both these vital witnesses, we do not find any evidence 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 liberty forthwith. His bail bond stands discharged. The provision of Sec. 437-A CrPC is not complied with upon considering 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.

17 in

Page 3 of 4

Spl POCSO Case No. 15/2016

Given under my hand and seal of this court on this the 27th day of January,

2020.

(D. BORA)

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

Carlos Ca

#### **ANNEXURE**

### Witnesses examined by the Prosecution:

PW1- Smti Tulu Bora, Informant.

PW2- Victim.

# Exhibits proved by the prosecution witnesses:

Ext.1- Ejahar

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

Ext.3- Charge Sheet.

### Witnesses examined by the Defence:

None

# Documents exhibited by the Defence:

None.

27/10