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

#### SONITPUR, ASSAM

State of Assam

-VS-

Sri Bikash Bhandari

..... Accused person



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. 1. Upa Mya)., learned Advocate

Date of recording Evidence: 05.09.2019.

Date of Argument

: 05.09.2019.

Date of Judgment

: 05.09.2019.

### <u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 23.03.2019 the informant, Sri Lalit Karki lodged an FIR with the OC, Sootea PS stating inter alia that on 21.03.2019 at about 11 AM, his 16-year-old daughter (name is withheld) was kidnapped by the accused, Bikash Bhandari. He stated that he could learn that both of them got married without his knowledge.
- 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 366(A) IPC, r/w Section 4 of the POCSO Act.
- 3. The accused in due course appeared before this court to face trial. The copies of the relevant documents were furnished to him. After taking note of the materials on record and those 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 4 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 two witnesses, i.e., the informant and the alleged victim as PW 1 and PW 2 respectively. Looking into the evidence as adduced by both these

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vital witnesses, more particularly, the evidence of the victim-PW 2, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Upon perusal of the evidence of both these vital witnesses, 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 under the age of 18 years from the lawful guardianship of her fatherthe informant?
- ii) Whether the accused on or about the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below 18 years of age?

## **Discussion, Decision and Reasons thereof**

- 5. PW 1 is the informant Sri Lalit Karki. He stated that the incident took place about 3 months back. According to him, his daughter was 16 years of old at that relevant time. On the day of the said occurrence, his daughter had gone for tuition but her friends met him and had asked him whether she had gone for tuition on that day. He could learn from them that his daughter does not regularly attend tuition though she goes out for the same. As he did not find his daughter, he lodged the FIR with the police, which he proved as Ext. 1. He had heard that his daughter had fled away with the accused but later, when his daughter reappeared, she told him that she had gone with the accused on her own wish on an outing. He further stated that his daughter told him that the accused did not misbehave her. In his cross, he stated that soon after he lodged the FIR, his daughter reappeared. According to him, the accused is innocent.
- 6. PW 2, the victim corroborated her father and stated that though she went out for tuition on that day, she instead went out with the accused and did not go for tuition. Her father Later, when she returned back to her home, she could learn that her presumed that she had eloped with the accused. She stated that the accused did not misbehave her while she went with him for the outing. According to a inform her parents to a thought that she had gone missing for which out of misunderstanding, he lodged the FIR FIR. She proved her statement recorded u/s 164 CrPC as Ext. 2. She stated that she had gone with the accused on her own wish, which has also been corroborated by the Ext. 2.
  - 7. Thus from the evidence of both these witnesses, more particularly, from evidence of PW 2, we do not find any material against the accused to convict him on the offences charged



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against him. The prosecution has failed to prove its case. As such I acquit the accused 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 5 th day of September,

2019.

(D. BORA)

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

Addl. Gessions (1973) Biswanath Chanail, Sonitput

## **ANNEXURE**

# Witnesses examined by the Prosecution:

PW1- Sri Lalit Karki

PW2- Victim



## **Exhibits proved by the prosecution witnesses:**

Ext.1- FIR

Ext. Statement of the victim u/s 164 CrPC

Witnesses examined by the Defence:

None.

**Documents exhibited by the Defence:** 

None.

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