

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
Special Judge,
Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 30 (DH)/ 2018.

U/S 4 of POCSO Act.

(G.R. Case No.217/2018 (DMJ), Dhemaji P.S. Case No.88/2018 Under Section 366(A) of IPC reads with Sec. 4 of POCSO Act)

The State of Assam

- Versus -

Shri Nitul @ Luhit Gogoi,Accused Person
S/O Lt. Katia Gogoi,
R/O Chowkham Gaon,
P.S. Dhemaji,
Dist.- Dhemaji.

17/9/2018
Special Judge,
Dhemaji.

Appearance:

Shri A. Fogla,For the State
Public Prosecutor

Shri K.C. Sonowal, Advocate &For the Accused

Smti Beuty Phukan, Advocate.

Date of prosecution evidence : 05-09-2018,

Date of arguments : **05-09-2018**

Date of Judgment : **17-09-2018.**

JUDGMENT

1. The prosecution case in brief is that on 07-03-2018 complainant- Smti Monju Daflary lodged an ejahar with Dhemaji Police Station alleging interalia that on 06-03-2018 at about 4.30 AM in the afternoon while her minor daughter-Smti Darshana Daflary went to her friend's house for social visit, the accused Nitul Gogoi kidnapped/abducted her (victim) from Amulguri Chariali and took her to his house on a motor cycle. It is also mentioned in the ejahar that on 07-03-2018 her daughter-informed her by Mobile Phone No. 9678650072 that she (victim) was kept confined in the house of accused Nitul Gogoi and asked them to rescue her.
2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused-Nitul Gogoi @ Luhit Gogoi u/s 366(A)/34 of IPC R/W section 8 of the POCSO Act.
3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 366/34 of IPC read with Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined five witnesses. At the closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, statement of the accused was recorded u/s 323 of Cr.P.C. Accused adduced no evidence in his defence.

4. Points for determination:-

- (1) That, on 06-03-2018 at about 4.30 PM At No.1 Ghyari Gaon under Dhemaji Police Station you kidnapped/abducted Smti Darshana Daflary, a minor girl aged about 16 years from Amulguri Chariali with intent that she might be compelled to marry you against her will or

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that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.

(2) That you, on 11-11-2017 at about 3.30 AM at night at Village-Kapahua under Dhemaji Police Station, committed penetrative sexual assault on Smti Lalita Das, a minor girl aged about 17 years and thereby you committed an offence punishable u/s 4 of POCSO Act.

5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** Smti Darsana Daflary stated that complainant is her mother. She knows accused Nitul @ Lohit Gogoi. The incident took place about six months back. She got introduced to the accused through one of her friend name dituporna. On the relevant date of occurrence she went out with her friend Junumoni to roam about. On the way they met the accused. Then she accompanied the accused on his motor bike to his house. She stayed there during night. As she did not come back home her parents were worried and lodged complaint before police. Accused did not physically abuse her. Police got her medically examined. She was also produced before Magistrate for recording her statement.

In cross-examination PW1 stated that she has no objection if the accused is acquitted in this case.

7. **PW2** Smti Manju Daflary stated that she is the complainant. She know accused Nitul @ Lohit Gogoi. Victim Darsana Daflary is her daughter. The incident took place about six months back. Her daughter got introduced to the accused through one of her friend name Rituporna. On the relevant date of occurrence she went out with her friend Dhunumoni to roam about. On the way she met the accused. Then she accompanied the accused

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on his motor bike to his house. She stayed there during night. As she did not come back home they were worried and lodged complaint before police. Accused did not physically abuse her. Ext.1 is the ejahar and Ext.1(1) is her signature.

In cross- examination PW2 stated that she has no objection if the accused is acquitted in this case.

8. **PW3** Smti Dhunumoni Sonowal stated that she knows the complainant and accused Nitul @ Lohit Gogoi. Victim Darsana Daflary is her friend. The incident took place about six months back. Darsana got introduced to the accused through her. On the relevant date of occurrence she went out with her to roam about. On the way they met the accused. Then she accompanied the accused on his motor bike to his house. She stayed there during night. As she did not come back home her parents were worried and lodged complaint before police.

9. **PW4** Smti Banti Daflary stated that she knows the complainant and accused Nitul @ Lohit Gogoi. She also know victim Darsana Daflary. She heard that one day Darsana did not come back home and then her parents lodged complaint before police.

10. **PW5** Smti Juli Daflary stated that she knows the complainant and accused Nitul @ Lohit Gogoi. She also knows the victim Darsana Daflary. She heard that one day Darsana did not come back home and then her parents lodged complaint before police. She know nothing about the incident.

Appreciation of evidence :

11. From the discussion of the evidence on record, it appears that in this case the victim and her mother-Smti Manju Daflary were examined as P.W-1, PW2 respectively. In their evidence these two vital witnesses stated that on the day of occurrence the victim went with her friend Junmoni to

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roam about. On the way, they met the accused. Then the Victim accompanied the accused on his motor bike to his house and she stayed there during night. As the victim did not come back home her parents were worried and lodged complaint before the Police. They further stated that the accused did not physically abuse the victim. Police got her medically examined and produced her before the Magistrate for recording her statement u/s 164 Cr.P.C. In cross-examination both PWs-1 and 2 stated that they have no objection if the accused is acquitted in this case.

12. PW3 Smti Dhunumoni Sonowal stated that the victim Darsana Daflary is her friend. Darsana got introduced to the accused through her. She stated that on the day of occurrence Darsana went out with her to roam about. On the way, they met the accused and then she (Darsana) accompanied the accused on his motor bike to his house and Darsana stayed the night in the house of the accused. As she (victim) did not come back home, her parents worried and lodged complaint before Police. PW4 Smti Banti Daflary and PW5 Smti Juli Daflary stated that one day the victim Darsana Daflary did not come back home and then her parents lodged complaint before police. They know nothing about the incident.

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13. From the evidence of prosecution witnesses, it is seen that the parties have compromised the case outside the court and hence, they are not willing to proceed against the accused. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

14. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. I find that the prosecution has totally failed to prove the charge u/s 366 of IPC read with Section- 4 of the POCSO Act against the accused.

15. In view of the above, I find the accused-**Nitul Gogoi @ Luhit Gogoi** not guilty of the charges u/s 366 of IPC read with Sec. 4 of POCSO Act leveled against him. Accordingly, he is acquitted of the charges leveled against him.

Set him at liberty forthwith.

16. Judgment is pronounced in open Court.

17. Given under my hand and seal of this Court on this the **17th** day of September/2018.

17/9/2018
(S. Das)
Special Judge,
Dhemaji.