## **:: IN THE COURT OF THE SESSIONS JUDGE, AT DIBRUGARH ::**

Present: Mrs. S.P. Khaund,

Sessions Judge,

Dibrugarh.

## POCSO Case No. 71/16

# U/S.366 IPC read with Section 4 of the POCSO Act State

-Versus-

Sri Puna Hazarika ......Accused.

#### **Appearance:**

For the State : Smti. Runumi Devi, Ld. P.P.

For the accused : Mr. Sanjib Thakur, Ld. Defence Counsel.

Date of evidence recorded: 14.05.2015 and 26.06.2015.

Date of argument heard : 16.12.2019

Date of judgment : 16.12.2019.

#### **JUDGMENT**

- **1.** The prosecution case in a narrow compass is that on 23.12.2012, at about 4.30 p.m, Puna Hazarika (hereinafter the accused) kidnapped the 13 year old victim 'X'.
- 2. An ejahar regarding this incident was lodged by the victim's father 'Y' and a Bogibil O.P G.D Entry No. 380 dated 24.12.12 was registered and the FIR was forwarded to the Borbaruah Police Station which was registered as Borbaruah P.S Case No. 184/12, under Section 366-A of the Indian Penal Code (IPC for short) and ASI Sumeswar Gohain was endorsed to continue with the preliminary investigation.
- **3.** The Investigating Officer (I.O in short) embarked upon the investigation. He went to the place of occurrence, recorded the statements of the witnesses and prepared the sketch map of the place of occurrence. He forwarded the victim to the doctor for medical examination and also to the Magistrate for recording her staetment under Section 164 of the Code of Criminal Procedure (Cr.P.C for short).
- **4.** On finding prima-facie materials, the I.O. submitted charge-sheet against the accused showing him as absconder, under Section 366-A IPC. On appearance of the accused, copies were furnished and as this case is triable by the Sessions Judge, the case was committed to this Court vide order dated 13.08.13, passed by the Learned Chief Judicial Magistrate, in connection with G.R Case No. 3077/12. During the pendency of this case, this case was registered as POCSO Case as the victim was below 18 years of age and after hearing both the sides, a formal charge under Section 4 of the Protection of Children from the Sexual Offences Act, 2012 (POCSO Act for short) was framed and read over and explained to the accused along with the earlier charge under Section 366-A IPC. The accused abjured his guilt and claimed innocence.

- **5.** To substantiate the stance, the prosecution adduced the evidence of 3 witnesses and the defence cross-examined the witnesses to refute the charges. Various documents were exhibited.
- **6.** I have heard the arguments forwarded by both the sides.

## **Points for Determination:**

- **7.** To decide this case in its proper perspective, the following points are taken up for proper adjudication of this case,
  - I. Whether on 23.12.2012, at about 4.30 p.m., the accused committed penetrative sexual assault on the minor victim 'X'?
  - II. Whether at the same time and place, the accused kidnapped the minor victim 'X' and induced her to go with him in order that she may be forced to illicit intercourse?

#### **Decision thereon and the Reasons for the Decision:**

- **8.** To decide this case in its proper perspective, it is necessary to delve into the evidence.
- **9.** The victim 'X' testified as P.W.2 that the accused was her neighbour. The incident occurred about 3 years ago. She was a student of Class-IX at that time and she was 12 years of age. At about 4.30 p.m., she went to the nearby shop and met the accused and his aunt. Then, she went along with the accused and his aunt on a bike and stayed near over-bridge at Dibrugarh in the accused person's sister's house, whose name is not known to her. On the next morning, she went with the accused and his aunt to Jorhat in a Winger and thereafter, she went to Dimapur by bus and reached Dimapur at about 3.30, and stayed in the accused person's aunt's house at Dimapur Lahorijan, for 4 days. After 4 days, she was recovered by her parents. Her father lodged an ejahar against the accused. The

Police forwarded her to the Magistrate who recorded her statement.

- **10.** This witness was declared as hostile on the prayer by the prosecution and the prosecution was allowed to cross-examine its own witness. She has denied that she has stated under Section 161 Cr.P.C. that-" On 23.12.12, at about 4.30 p.m., the accused threatened her and forcibly took her on a motorcycle to Dibrugarh. When they arrived at Dibrugarh it was already night and he confined her in one of his related sister's house, near the over-bridge. On the next day, at about 10.00 a.m., the accused took her to Moran in a hired car. From Moran, he took her in a Winger to Jorhat and in Jorhat he kept her in his sister, Smt. Lulu Gowala's house and she stayed there for one night. On the next day, they went to Golaghat from Jorhat in a Winger and from Golaghat, they went to Dimapur in a bus and the accused took her to his maternal aunt's home at Lahorijan. He also threatened her that he married her and as she was terrified, she stated before Malati Das that she was married to the accused. The accused treated her as his wife in his aunt Malati Das's house and had sexual relationship with her, Initially, she restrained him, but out of fear of her life, she stayed as his wife against her consent. She was not allowed to inform her parents and talk to other persons."
- 11. The evidence of the victim and her statement under Section 164 Cr.P.C. does not inculpate the accused. The statement under Section 161 Cr.P.C. cannot be considered as evidence. The victim testified in the Court and stated before the Magistrate that she went away with the accused. There is no instance of force exercised by the accused. The accused cannot be held guilty of kidnapping the victim. There is no evidence that the accused had sexual relationship with the victim. The testimony of the victim does not implicate that the accused forcefully kidnapped her or induced her to go with him. The victim went away with the accused on her own volition without informing her parents.
- **12.** The informant 'Y' testified as P.W.1 that the accused is his neighbour. The

incident occurred in the year 2012. His daughter is at present 13 years of age. On the date of the incident, at about 3.30 p.m., his daughter went to a shop near their house. At about 5.00 p.m., they started searching for her because she did not return from the shop. They could not trace her out. On the same day, the accused was also missing from his house and some labourers who were working on the road informed him that they saw his daughter proceeding in the same direction. All the neighours also suspected that the accused is complicit because he was also missing from his house. Then, he lodged the ejahar Exhibit 1 with the Police and Exhibit 1(1) is his signature. The Police recovered his daughter from Lahorijan at Dimapur. His daughter was kept in the accused person's aunt's house at Diampur. His daughter never went to Dimapur. The accused person's aunt took his daughter from Chiring Chapori to Dimapur. At the time of the incident, his daughter was promoted from Class-VIII to Class-IX. The accused person's younger brother Baba told him that his daughter was at Dimapur. Then, they informed the Police about the address and the Police recovered his daughter from the address.

- 13. The informant was also declared as hostile on the prayer by the prosecution who was allowed to cross-examine its own witness. The informant has denied that he stated under Section 161 Cr.P.C. that " On 23.12.12, at about 4.30 p.m., the accused kidnapped his daughter with intent to marry her and confined her at Lahorijan, Nepali Basti, at Dimapur, in his relatives' house. He learnt about the address from some reliable sources and he along with his wife and friends recovered his daughter on 17.03.13, from that address." Exhibit 2 is the statement of the complainant and Exhibit 2-A is the hostile part.
- **14.** The evidence of the informant does not inspire confidence. The evidence of the complainant also does not implicate that the accused kidnapped his daughter. His evidence depicts that the accused person's aunt took away his daughter which is contrary to his FIR and also contrary to the statement of the victim. The accused cannot be held guilty on surmises. The informant himself refrained to

inculpate the accused.

- Nabakanta Lahan testified as P.W.3 that the informant, the victim and the accused are known to him. The incident occurred in the year 2013. On that day, he was at his residence when the informant went and told him that his daughter 'X' was missing from his house. They set out in search of the victim, but could not find her. They also lerant that Puna Hazarika was missing from his house. Then, they were certain that the accused eloped with the victim 'X'. She was recovered with the accused from the Jorhat side.
- **16.** Thus, the evidence of P.W.3 also does not implicate that the accused forcefully induced the victim to go with him in order to compel her to illicit intercourse. The evidence of P.W.1, P.W.2 and P.W.3 does not implicate that the accused committed sexual assault on the victim 'X'.
- **17.** In view of my foregoing discussions, it is thereby held that the prosecution failed to prove this case beyond a reasonable doubt. The accused Sri Puna Hazarika is thereby acquitted from the charges under Section 366- A IPC and under Section 4 of the POCSO Act on benefit of doubt and is set at liberty forthwith.
- **18.** Judgment is signed, sealed and delivered in the open Court on the 16<sup>th</sup> day of December, 2019.

Sessions Judge Dibrugarh

### **ANNEXURE**

## **PROSECUTION WITNESSES:**

P.W.1: Informant "Y".

P.W.2: Victim 'X'.

P.W.3: Sri Nabakanta Lahan.

## **DEFENCE WITNESSES:**

Nil.

## **EXHIBITS (BY PROSECUTION SIDE):**

Exhibit 1: Ejahar.

Exhibit 2: Statement of the informant 'Y' under Section 161 Cr.P.C.

Exhibit 2-A: The part of the statement of 'Y' declared hostile.

Exhibit 3: Statement of the victim 'X' under Section 164 Cr.P.C.

Exhibits 3(1) and 3(2) are the signatures of the victim.

Exhibit 4: Statement of the victim 'X' under Section 161 Cr.P.C.

## **EXHIBITS (BY DEFENCE SIDE):**

NIL.

Sessions Judge, Dibrugarh