## IN THE COURT OF THE SPECIAL JUDGE, BARPETA

# Special POCSO Case No. 133/2019 U/S 366(A)/376 IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-21.09.2019

State of Assam

- Vs -

Manowar Hussain...... Accused

Date of Recording Evidence on – 22.11.2019

Date of Hearing Argument on – 22.11.2019

Date of Delivering the Judgment on – 22.11.2019.

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused------Md. Abdul Mannan, Ld. Advocate.

#### **JUDGMENT**

- 1. The brief fact, of the prosecution case, is that on 27.04.2019 one Ajijul Hoque lodged an information in Kachumara P.S. stating inter alia that while his 13 years old minor daughter used to visit school at Kantu Shiekh M.E. Madrasha she was disturbed by accused every day and on 25.04.2019 at about 9 am his daughter went towards school but did not returned. It is learnt that accused in a preplanned manner kidnapped his daughter. Hence the case.
- 2. Following the information police registered a case being Kachumara P.S. case No 72/19 u/s 366/34 IPC R/W section 4 of POCSO Act and investigated the case.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses, drew sketch map, sent the victim girl for medical examination and also forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C.

- 4. Thereafter, on conclusion of investigation, I/O finally laid the charge sheet against accused Manowar Hussain u/s 366(A) IPC and section 4 of POCSO Act.
- 5. During the course of time, when accused persons appeared in court after due compliance of section 207 Cr.P.C. formal charges u/s 366(A)/376 IPC and section 4 of POCSO Act are framed after hearing both sides. The particulars of the offences on being read over and explained, accused pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution examined only 2 witnesses namely- the victim girl as PW-2 and the informant as PW-1. However, considering the nature and quality of evidence adduced by both the star witnesses giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

### 8. Now point for determination ;-

- 1. Whether on 25.04.2019 you kidnapped the victim girl (X) while going to school as alleged?
- 2. Whether on the same day and time you committed rape on the victim girl as alleged ?
- 3. Whether on the same day and time you committed sexual assault on the victim girl as alleged ?

### 9. Discussion, Decision and reasons for such decision:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. Before going to discuss the evidence on record it would be useful to refer section 366-A/376 IPC and section 4 of POCSO Act.

"Section 366-A IPC: procreation of minor girl: `-Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with

imprisonment which may extent to 10 years, and shall also be liable to fine."

"Section 376 Punishment for rape:- (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

- (2) Whoever, -
- (a) being a police officer, commits rape -
- (i) within the limits of the police station to which such police officer is appointed; or
  - (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer,or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remanded home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative , guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
  - (g) commits rape during communal or sectarian violence; or
  - (h) commits rape on a woman knowing her to pregnant; or
  - (i) commits rape on a woman when she is under sixteen years of age; or
  - (j) commits rape on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
  - (I) commits rape on a woman suffering from mental or physical disability; or
- (m)wile committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
  - (n) commits rape repeatedly on the same woman, shall be punished with rigorous impression for a term which shall not be less than

ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation - For the purpose of the sub-section -

- (a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the statement;
- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."
- **"3. Penetrative sexual assault**. A person is said to commit "penetrative sexual assault" if -
- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 11. Now, on perusal of the offence u/s 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and

section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d).

- 12. On perusal of section 366-A IPC the following ingredients are found:
  - I) The accused induces a minor girl below the age of 18 years;
  - II) she was forced to go from any place or to do any act;
  - III) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 13. Now, in the context of the offence u/s 366-A IPC let this court examined what the witnesses said in this regard.
- 14. PW-1, who is the informant deposed in his evidence that since his wife abuse his daughter for not attentive to her reading before she went to school. So, his daughter did not returned home after going to school, but after 2 days she was found in the house of Anowar Hussain. In his cross examination he stated that daughter told him voluntarily and have sexual relation with him. But the alleged victim denied any sexual relation with accused in the course of her deposition. According to her she eloped with accused without informing to her parents.
- 15. On careful evaluation of the evidence of PW-1 and PW-2 what crystallizes before this court is that the alleged victim girl eloped with accused on her own will without any force or pressure because she fell in love with accused person, even though, FIR was lodge alleging that accused kidnapped the daughter of informant by force. But in her evidence before court on oath the victim girl denied the allegation of her father PW-1. Therefore, it appears that though the victim girl stated her age to be 16 years in the absence of any proof regarding her age no inference can be drawn that she was minor at the time of incident.
- 16. Moreover, in her statement in court she no where stated that accused had influenced her or forced her to move from her house to another place. Moreover, the prosecution has not proved the minority of the girl by any credible documentary proof.
- 17. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Manowar Hussain u/s 366-A/376 IPC and section 4 of

POCSO Act as there was absolutely no materials emerged for having found the accused person guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Manowar Hussain from the offence u/s 366-A/376 IPC and section 4 of POCSO Act on the ground of insufficient evidence and set them at liberty forthwith.

- 18. The terms of bail bond of accused persons are extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 19. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 20. Let the case record be consigned to record room after completing the formalities.
- 21. Given under my hand and seal of this Court on this 22<sup>nd</sup> day of November, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

## **APPENDIX**

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = Azizul Hoque. The informant.

PW-2 = is victim girl (X).

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.