## IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR : AT NORTH LAKHIMPUR.

**PRESENT** - M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

#### SPECIAL (POCSO) CASE NO.69/2019.

Under Section - 366 IPC and under Section 4 of the POCSO Act.

### **PARTIES**

State of Assam. ... Complainant.

-versus-

Sri Dipjyoti Borah. ... Accused.

#### **ADVOCATES APPEARED IN THE CASE:**

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam. Mrs. Gitanjali Gogoi, Advocate. ... For the Accused.

Date of framing of charge. : 08.08.2019.

Date of taking evidence. : 31.08.2019.

Date of hearing Argument. : 31.08.2019.

Date of delivery of Judgment. : 09.09.2019.

### <u>JUDGMENT</u>

1. The case of the prosecution side may, in brief, be described thus :

The informant, Sri Prasanna Chetia on 01.12.2018, lodged an ejahar with Dhakuakhana Police Station to the effect that on 16.11.2018 at about 11 pm at night, his daughter victim X had been kidnapped by the accused, Sri Dipjyoti Borah from his house. In the ejahar, it is stated that as they were engaged in searching the victim X, delay had been caused in filing the ejahar.

- 2. On receiving the ejahar, the Officer-in-charge of Dhakuakhana Police Station registered a case vide Dhakuakhana P.S. Case No.196/2018 under Section 366(A) IPC.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared the sketch map of the place of occurrence. The I.O. recorded the statements of the witnesses u/s 161 CrPC. On 28.03.2019, the accused, Sri Dipjyoti Borah had surrendered before the learned Sub Divisional Judicial Magistrate (M), Dhakuakhana, and he was remanded to the judicial custody. Thereafter, the I.O. got the victim X medically examined by the doctor at North Lakhimpur Civil Hospital. The I.O. got recorded the statement of the victim X u/s 164 CrPC in the court. The I.O. seized the Birth Certificate of the victim X issued by the Ghillamara PHC, Dist. Lakhimpur. The I.O. after completion of investigation of the case on being found sufficient incriminating materials against the accused, Sri Dipjyoti Borah under Sections 366(A)/ 376 (3) IPC RW Section 4 of the POCSO Act, submitted the charge-sheet against the accused, Sri Dipiyoti Borah under Sections 366(A)/ 376 (3) IPC and under Section 4 of the POCSO Act.
- 4. The learned Sub-Divisional Judicial Magistrate (M), Dhakuakhana, vide order dtd. 26.06.2019 forwarded the case to this court as the offence under Section 4 of the POCSO Act is triable by the Special Judge.
- 5. The accused, Sri Dipjyoti Borah made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the accused, Sri Dipjyoti Borah under Section 366 IPC and under Section 4 of the POCSO Act in the case record, the charges under Section 366 IPC and under Section 4 of the POCSO Act had been framed against the accused, Sri Dipjyoti Borah. The charges were read

over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

- 6. In course of trial, the prosecution side examined 5 (five) witnesses.
- 7. The recording of the statement of the accused person u/s 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.
- 8. The accused person led no evidence in his defence.
- 9. Heard Argument from the learned advocates of both sides.
- 10. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.
  - 11. The points for determination in this case are:
- (I) Whether the accused, Sri Dipjyoti Borah on 16.11.2018 at about 11 pm at night at village, Ghatapara Itakhuli gaon under Dhakuakhana Police Station, Dist. Lakhimpur, kidnapped the victim X, a minor girl above the age of 12 years with intent that she might be compelled or knowing it to be likely that she would be compelled to marry the accused person or that she might be forced or seduced to illicit intercourse with him?
- (II) Whether the accused, Sri Dipjyoti Borah after kidnapping the victim X, a minor girl above the age of 12 years, committed penetrative sexual assault on her person?

#### **DECISION AND REASONS THEREOF**

12. PW.1 is the victim X. PW.1, the victim X in her evidence stated that the informant, Sri Prasanna Chetia is her father. She in her evidence stated that she did not know the accused person. According to her evidence, the occurrence had taken place in the year, 2018 in the month of November. On the date of occurrence in the evening, she went to the house of her friend, named Smti Ankita Chamua, situated at village, Machkhowa, to attend a marriage ceremony without informing in her house. She in her evidence stated that she stayed for some days in the house of her friend, Smti Ankita Chamua. After some days, she returned back to her house. Then, she came to know that her father had lodged an ejahar with the Police Station alleging that she had been missing from the house. According to her evidence, thereafter, the police had taken her and got her medically examined by a doctor. The I.O. got her statement recorded u/s 164 CrPC. She in her evidence also stated that the accused person neither kidnapped her nor performed any sexual intercourse with her.

This is the evidence adduced by PW.1, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

13. PW.2, Smti Dibya Chetia is the mother of the victim X. She in her evidence stated that the victim X is her daughter. Sri Prasanna Chetia is her husband. She in her evidence stated that she did not know the accused person of this case. According to her evidence, in the month of November of the year, 2018, her daughter victim X had been missing from her house. Thereafter, they searched for their daughter victim X, but could not find her. Then, her husband lodged the ejahar with the Police Station regarding missing of her daughter victim X. After few days, the victim X had returned back to their house. Then, the victim X stated to her that she had gone to the house of her friend, named Smti Ankita Chamua at village, Machkhowa

to attend a marriage ceremony. She in her evidence also stated that the victim X stated that the accused person neither kidnapped her nor performed any sexual intercourse with her.

This is the evidence adduced by PW.2, Smti Dibya Chetia, the mother of the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

14. PW.3, Sri Prasanna Chetia is the father of the victim X as well as informant of the case. PW.3, Sri Prasanna Chetia in his evidence stated that the victim X is his daughter. He in his evidence also stated that he did not know the accused person, who has been present in the accused dock of the Camera Trial room. According to his evidence, the occurrence had taken place in the month of November of the year, 2018. On the date of occurrence, his daughter victim X was found missing from his house. Then, he along with other family members searched for the victim X, but could not find her. After some days, his daughter victim X came back to his house. Then, the victim X stated that she had gone to Machkhowa in the house of her friend namely, Smti Ankita Chamua, to attend a marriage ceremony. The victim X also stated to him that the accused person had neither kidnapped her nor performed any sexual act with her.

This is the evidence adduced by PW.3, Sri Prasanna Chetia, the father of the victim X as well as informant of the case. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

15. PW.4, Sri Jyoti Chetia in his evidence stated that the informant, Sri Prasanna Chetia is his brother-in-law and the victim X is the daughter of Sri Prasanna Chetia. He in his evidence stated that he did not know the accused person, who has been present in the accused dock of the Camera Trial room. He in his evidence stated that

his house is situated nearby the house of Sri Prasanna Chetia. According to his evidence, the occurrence had taken place in the month of November of the year, 2018. His brother-in-law, Sri Prasanna Chetia stated to him that the victim X had been missing from the house. Then, he along with Sri Prasanna Chetia and Smti Dibya Chetia, who is the wife of Sri Prasanna Chetia, searched for the victim X, but could not find her. Thereafter, Sri Prasanna Chetia lodged the ejahar with the Police Station. After some days, the victim X returned back to her house. He in his evidence stated that then, he met with the victim X in her house. Then, the victim X stated that she had gone to the house of her friend, named Smti Ankita Chamua at village, Machkhowa, to attend a marriage ceremony. He in his evidence also stated that the victim X had stated to him that the accused person had neither kidnapped her nor performed any sexual act with her.

This is the evidence adduced by PW.4, Sri Jyoti Chetia. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

16. PW.5, Sri Keshab Chetia in his evidence stated that he knows the informant, Sri Prasanna Chetia. The house of the informant, Sri Prasanna Chetia is situated in his village. He in his evidence stated that he knows the victim X, who is the daughter of Sri Prasanna Chetia. He in his evidence also stated that he did not know the accused person, who has been present in the accused dock of the Camera Trial room. According to his evidence, the occurrence had taken place in the month of November of the year, 2018. After 2 /4 days from the date of occurrence, he came to know from the village people that the victim X had been missing from her house. Thereafter, he came to know from the village people that the victim X had returned back to the house of her father. He in his evidence also stated that he did not know where the victim X had gone from the house of her father. He also stated that he had not enquired about it.

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This is the evidence adduced by PW.5, Sri Keshab Chetia. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the accused person

regarding commission of any offence.

Because of what have been discussed and 17.

pointed out here-in-above, it is appeared that the prosecution side has

totally failed to prove the charges under Section 366 IPC and under

Section 4 of the POCSO Act brought against the accused, Sri Dipjyoti

Borah. The accused person deserves to be acquitted.

18. I, therefore, hold the accused, Sri Dipjyoti Borah

not guilty and acquit him from the charges under Section 366 IPC and

under Section 4 of the POCSO Act. The accused person is set at his

liberty forthwith.

The bail bond of the accused person is 19.

cancelled and his surety is discharged.

20. The seized article be handed over to the person

from whom, it was seized.

21. Given under my hand and seal of this court on

this the 9<sup>th</sup> day of September, 2019.

( M. A. Choudhury ) Special Judge, Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge,

Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

Contd...

### **APPENDIX**

#### 1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 - Victim X.

PW.2 - Smti Dibya Chetia, the mother of the victim X.

PW.3 – Sri Prasanna Chetia, the informant of the case as well as father of the victim X.

PW.4 - Sri Jyoti Chetia.

PW.5 - Sri Keshab Chetia.

# 2. <u>WITNESSES EXAMINED BY THE DEFENCE SIDE</u>:

Nil.

3. <u>DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE</u>: Nil.

4. <u>DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE</u>: Nil.

( M. A. Choudhury )
Special Judge,
Lakhimpur, North Lakhimpur.