IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge,Barpeta.

JUDGMENT IN SPECIAL POCSO CASE NO. 72 OF 2019 (G.R.No.- 780/2019) Howly P.S. Case No. 66 of 2019

State of Assam

-versus-

Shyamal Ray @ Rajen S/O Lt. Adar Ram Singh Resident of Ghorukhganj, Uttar Dinajpur, West Bengal

..... Accused.

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned

Public Prosecutor, Barpeta.

For the Accused : Syed Rashid Ahmed, learned

Counsel, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,

<u> 2012.</u>

Date of Charge : 16.05.2019,

Date of Prosecution evidence : 13.06.2019;14.06.2019;

25.06.2019; 26.06.2019 &

20.07.2019,

Date of Statement recorded

under Section 313 CrPC : 06.08.2019, Date of Argument & Judgment : 12.09.2019.

<u>JUDGMENT</u>

1). The prosecution case, in brief, is that Howly P.S. Case No 66 of

2019 under Sections 366(A) of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Dasarath Das, father of the victim.

In the aforesaid **F.I.R**., the informant Dasarath Das (P.W.3), who is the father of the victim girl, alleged interalia, that on 11.02.2019 at about 9:00 PM, the accused person namely Shyamal Ray @ Rajen kidnapped her minor daughter aged about 13 years, from Howly by inducing her. It is alleged in the ejahar that the accused took his minor daughter to some unknown place.

On receipt of the aforesaid F.I.R. dated 12.02.2019 by the Officer-In-charge, Howly Police Station, the same was registered as **Howly P.S. Case** No 66/2019 under Sections 366(A) of IPC. Section 4 of the Protection of Children From Sexual Offences Act, 2012 was also added subsequently.

During the course of investigation, the victim girl was recovered and medically examined by the doctor. Her statement under section 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge-sheet, in the case, against the accused Shyamal Ray @ Rajen under Sections 366(A) of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012. vide charge sheet No. 47/2019, dated 31.03.2019.

- **2).** On production of accused, copy was furnished to him by the undersigned.
- 3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, charges were framed by undersigned against the accused under Sections 365 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.
- **4).** During the course of trial, **08 [eight]** number of witnesses

including the Medical Officer, informant and victim were examined on behalf of the prosecution to prove the charge under Sections 365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

The Prosecution Witnesses was closed, as per prayer made by learned Public Prosecutor, Barpeta. Statement of the above named accused person was recorded under Section 313 CrPC. Accused denied alleged incriminating materials against him and claimed himself to be innocent. Accused person declined to adduce evidence in his defence.

- 5). I have heard **Sri Lalit Ch. Nath,** learned Public Prosecutor of Barpeta, for the State as well as **Syed Rashid Ahmed**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections**365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether on or about 11.02.2019 at about 9:00 PM within the jurisdiction of Howly P.S., District Barpeta, accused kidnapped Priyanka Das, minor daughter of informant Dasarath Das, from Howly, with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC?
- (ii) Whether accused on the aforesaid date or thereafter committed penetrative sexual assault upon minor victim, daughter of the above named informant and thereby committed an offence punishable under Section 4 of the Protection of Children From Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Dr. Anima Boro [P.W.1] deposed that on 27.02.2019, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, in connection with Howly P.S. case No. 66/2019, she examined victim Priyanka Das, aged about 14 years, D/O Sri Dasarath Das of Patlagaon under Gobardhana P.S., District Barpeta on being identified by WPC-(676) Mamani Das and found as follows:

History:- History of alleged kidnap by Shyamal Singh, 34 years/M, went to Siliguri on 11.02.2019 from Howly High School and then took to Siliguri and then to Goa and recovered by police at Goa.

Physical Examination:-

Identification marks:- One small black mole on right side of mandible.

Height: - 150 Cm. Weight: - 40Kg.

Chest girth at nipple level: - 78 Cm.

Abdominal girth at navel level :- 64 Cm.

General built & appearance: - Average.

Voice: Feminine.

Teeth: 28.

Hairs: Axillary/Body :- Present.

Breasts:- Developed.

Puberty (as told by the individual):- At 12 years.

Menstruation (as told by the individual):- Regular.

L.M.P. (as told by the individual):- 07 days before.

Mental condition: - Stable

Gait: - Normal

Intelligence:-Average.

Wearing garments and any suspected stains present:- No stain detected at wearing garments.

Bodily injuries: - No injury on body.

Genital Examination:-

Pubic hairs:- Present.

Vulva (Labia majora & minora):- Normal

Hymen:- Tear at 6 O'clock.

Vagina: - admits 1 finger.

Cervix and Uterus:- Uterus not palpable per abdominally.

Fourchette and Perineum: - Normal.

Vaginal swab collected:-

Result of vaginal swab smear examination:- No Spermatozoa is seen on microscopic examination of vaginal swab slide.

Result of X-Investigation: Plate No. 26 MLC Dated- 28.02.2019

Wrist Joint :- Epiphyseal union is not completed.

Elbow Joint :- Epiphyseal union is completed.

Shoulder Joint & Pelvis:- Epiphyseal union are not completed.

Ultrasonography advised and result:- No USG report.

Opinion:-

- (1) There is no recent sign of sexual intercourse, but the victim is exposed to sexual intercourse.
- (2) There is no injury on body/private part.
- (3) Victim is above 14 years and below 16 years at present.

She exhibited her medical report as Ext. 1 and Ext.1(1) is her signature.

In her cross-examination, she stated that age of the victim has been ascertained upon radiological test. She further stated that the age of the victim might be flexible.

8). Priyanka Das [P.W. 2] deposed in her evidence that her father has lodged this case and she knew the accused person. Incident took place on the next day of Saraswati Puja in this year. She went to school alongwith Nasima and others friends. She stated that their teacher told them that their school is closed and asked them to come after one month. Then she proceeded to return to her home. She noticed the accused standing in front of a shop near the school. She stated that she knows the accused person, prior to the incident, as accused happened to be husband of friend of her mother.

She further stated that accused proposed her to drop at her house. Accused came with a maruti vehicle. She stated that she went with the accused on believing him. She further told that accused took her to Siliquri by

maruti vehicle and the maruti vehicle was driven by one driver. They got down from the vehicle just before reaching Siliguri. She further stated that accused took two rooms in a hotel and she stayed one night in that hotel. In the hotel accused came to her room at night for 2-3 times and wanted to have physical relation with her, but she obstructed him. She stated that accused touched her body. She further stated that accused tried to insert his penis into her private part but he could not insert completely and he tried it 3-4 times but could not succeed.

She stated that accused took her to Durgapur in a bus to the house of one Champa, who happens to be a friend of accused. They stayed separately two night there. She further stated that she then telephoned her mother from the mobile of accused person in his presence. She stated that accused purchased tickets to Goa on the next day and took her to Goa by train. While going to Goa, TT questioned the accused and on getting suspicion over his activity, both of them were handed over to police by the TT. Then she talked to her father over telephone from thana. Police sent her for medical examination. After apprehension by police, her father came and then she came back with her father. She was brought to Howly police station and police sent her for medical examination and also got her statement recorded by the learned Magistrate u/s 164 Cr.PC. She further stated that she narrated the incident to her father and after that her father lodged this case.

She exhibited her statement recorded under Section 164 CrPC as Ext. 2 and Ext. 2(1), 2(2) & 2(3) are her signatures.

In her cross-examination, she stated that she knew the accused person for a long time. Accused used to visit their house and they had a good relation with the accused person. She deposed that she came to know after reaching school that school was closed. She stated that at the time of sitting in the vehicle of the accused her friend Nasima was with her. She sat in the vehicle of the accused as per her free will. She stated that it takes 15 minutes to walk to her home from the school. On the way, while going with the accused person in the vehicle, she found many persons, shops, etc. on the road. She stated that she did not raise hue and cry when accused did not take her to her home and took somewhere else. She traveled for more than 5 hours in the said vehicle with

the accused and they did not stop on the way. She further stated that she did not raise hue and cry while traveling with the accused in the entire journey. Before reaching Siliguri, they got down and stayed at a place for one hour. Then they went to a bus stand and she did not know the name of the bus stand. There were many people in the bus stand but she did not tell anyone of them about the incident. She stated that hotel authority gave them room though she did not have identity card. She did not raise any objection in the hotel also before taking the rooms in the hotel. She stated that they exchanged their rooms as per wish of the accused person. There were many people in the hotel including hotel staff. She deposed that the lock of the door of her room was defective and one can come into the room by pushing the door from outside. When accused came in her bed and slept with her, she did not raise hulla, but she restrained accused person.

She admitted that she stated before the police that accused did bad works with her thrice with her consent.

She denied that she did not state before the police that accused tried to insert his penis into her private part; that she did not state before the police that accused touched her chest and other parts of her body.

She further stated that they went to Durgapur by bus. She did not tell any person of the bus that accused has brought her without her consent. There were 6-7 persons in the family of Champa at Durgaur. She deposed that she told the family members of the Champa that accused brought her without her consent.

She denied that she did not state before police that she told her mother about the incident over telephone; that police did not examine her in presence of her mother.

She further stated that she knew that accused has gone to purchase ticket for Goa while residing in the house of Champa, she did not tell the TT that accused has brought her. Later, she deposed that she told the TT when he took her in a side that accused brought her without her consent with promise that accused will drop her at her house.

She stated that she is the eldest child of her family.

She denied that she did not state before police at the police station at the place where she went by train and caught by TT that accused brought her with promise that he will drop her at her home; that she did not narrate the incident to her parents after her recovery.

She stated that she stayed in her house for one day. After that she came before the learned Magistrate to deposed u/s 164 Cr.PC. She stated that she told before the learned Magistrate as told by her parents.

She denied that accused did not kidnap her or did bad works with her as alleged.

9). Dasarath Das [P.W. 3] who is the informant of this case has deposed in his evidence that victim is his eldest daughter. He knew accused. He deposed that incident took place before more than three months. At the time of incident he was at his house at Anandabazar.

He further stated that his victim daughter used to stay at her maternal uncle's home at Howly and he stays at Anandabazar. Then his brother-in-law informed him that his victim daughter has been missing from her school at Howly. He searched her, but did not find her. He also stated that wife of accused told him that her husband is also missing. Then he suspected that accused has taken his victim daughter with him. Then, as told by the wife of accused, he and wife of accused went to Islampur, Siliguri. He searched his daughter, but did not find her.

He stated that after 7 days of incident, he received one telephonic call from the police of Vasco, Goa. The police asked whether the victim is his daughter or not and he replied yes and requested the police to keep his victim daughter there. He deposed that he then contacted the police of Howly police station. He further stated that in the meantime, he lodged the FIR before Howly police station, on the next day of the incident, which was written as per his instruction.

He exhibited the FIR as Ext. 3 and Ext. 3(1) is his signature. He stated that he brought his victim daughter with the help of police of Goa to Howly. Police examined him alongwith his victim daughter. Police also send his victim daughter for medical examination and got her statement recorded u/s 164

Cr.PC.

During his cross-examination, he stated that SI Khagen Boro went there alongwith 4 others including him. He met his victim daughter at Shelter home at Vasco which was at a distance of 32 kms from the Vasco police station. He deposed that accused was kept in a separate jail at Goa. He stated that when he asked what she had done, his victim daughter did not tell any incriminating thing against the accused person. He stated that police also examined him on the day of lodging the FIR but police did not examine him subsequently.

He denied that he did not know anything about the incident and the accused did not had any physical relation with his victim daughter.

10). Atowar Rahman [P.W. 4] deposed in his evidence that he do not know the accused person of this case but he knew the informant and victim of this case.

He was declared hostile as prayed by Ld. Public Prosecutor. "He denied that he state before police that on 11-02-2019 victim went out from her house to go to Howly High School and thereafter went on missing. Later on, they came to know accused Shyamal Roy Kidnapped her after inducement.

He denied that he has deposed falsely today for the sake of accused person.

During his cross-examination, he stated that he did not know accused person and he did not state before police as told by government advocate, as above.

He further stated that he did not have any personal knowledge about the incident.

11). Shahidul Islam [P.W. 5] deposed in his evidence that he know the accused person of this case by face and he did not know the informant but he knew the victim of this case. He deposed that he heard that after the incident that victim went to her school and from her school accused fled away with the victim. Later on, police brought both victim and accused to Howly PS.

In his cross-examination he stated that he did not know with

whom and how victim fled away. He deposed that he neither asked any of the family members of the victim nor they informed him about the incident. He further deposed that he do not have any personal knowledge about the incident.

12). Ahadul Islam [P.W. 6] deposed in his evidence that he did not know the informant and accused of this case but he knew the victim of this case.

He stated that he was not present at the time of incident. He further stated that after two (2) months of the incident when he came to his house, he heard that victim fled away with one boy.

In his cross-examination, he deposed that he do not have any personal knowledge about the incident and he just heard about it.

13). Khagendra Nath Boro [P.W. 7] who is the I.O. of this case has deposed in his evidence that on 12-02-2019, he was working at Howly PS as ASI of the said police station. He investigated the case which was registered as Howly PS Case No. 66/2019 U/S 366(A) IPC. He exhibited the FIR as Ext. 3 and Ext. 3 (2) is the signature of the then O.C. Sri Pankaj Das along with his endorsement. Upon taking charges of the investigation, he went to place of incident. He recorded the statement of all the witnesses. He drew the sketch map of the place of the incident. Ext. 4 is the sketch map and Ext. 4 (1) is his signature.

He recovered the victim girl from Goa and brought her back on 27-02-2019. She was sent for her medical examination and her statement was also recorded u/s 164 Cr.P.C. He also collected medical examination report of the victim.

After that, he handed over the case diary to O.C. of the PS on 25-03-2019 upon his transferred.

He stated that witness Atowar Rahman (PW-4) deposed that on 11-02-2019, victim went out from her house to go to Howly High School and thereafter went on missing. Later on, he came to know that accused kidnapped her after inducement.

He also seized birth certificate of the victim. He exhibited seizure list as Ext. 5 and Ext. 5 (1) is his signature. He stated that he gave the same it to

the Zimma of mother of the victim.

In his cross-examination, he stated that place of occurrence has been shown rented house of victim at 1 No. Ward, Howly but the details of place of occurrence is not given at Ext. 4.

He also stated that he did not record the statement of the nearest witnesses namely 1. Hanufa Begum, 2. Aminul Haque, 3. Tarmuz Ali and 4. Maynal Haque as they did not co-operate with him in the investigation. He also stated that he has not given any note in the case diary, in this regard.

He further stated that on 16-02-2019 they got information about whereabout of the victim and they brought the victim from 'Apna Ghar' Goa. He did not examine any witness at Goa.

He stated that victim was examined on 27-02-2019. He seized the birth certificate of the victim and also went to her school. He did not show seized birth certificate before the Ld. Magistrate.

He further stated that the photocopy of the seized birth certificate is available in the case record. He deposed that the father name of the victim in the birth certificate has been shown as Lt. Pradip Das and mother name as Sumitra Das. He also stated that he did not examine Sumitra Das and her mother Nira Bala Boro.

He denied that he did not seize the birth certificate of the victim of this case.

Victim Priyanka Das (PW-2) did not state before him that accused tried to insert his penis into her private part; that accused touched her chest and other parts of her body; that she informed her mother about the incident over telephone.

He denied that witness Atowar Rahman (PW-4) did not state before him that on 11-02-2019 victim went out from her house to go to Howly High School and thereafter went on missing. Later on, they came to know accused Shyamal Roy Kidnapped her after inducement.

He denied that he did not possess power to investigation of the case.

14). Niranjan Das [P.W. 8] I.O. of the case deposed in his evidence

that on 30-03-2019 he was working at Howly PS as SI (P) of police. On that day OC Howly PS handed over the case diary to him for completion of investigation.

He stated that on perusal of case diary he found that investigation of the case is complete and so he submitted charge-sheet against the accused person u/s 366(A) IPC read with section 4 of the POCSO Act.

He exhibited charge-sheet as Ext. 6 and Ext. 6 (1) is his signature.

His cross-examination was declined by the defence side.

15). From a close perusal of the evidence, it is seen from the statement of the victim (P.W. 2), who is star witness of this instant case who deposed in her evidence that she knew the accused person prior to the incident. She stated in her evidence that on the day of occurrence, she went to school alongwith others and returned home then she met accused person who proposed her to drop at her house. After that, accused took her to Siliguri by the maruti vehicle and stayed there in a hotel and took two rooms for one night in that hotel.

Then, both of them went to Durgapur in a bus to the house of one Champa, who happens to be a friend of accused and stayed two night there. After that, they proceeded to Goa by train.

Hence, it is crystal clear that victim went with the accused person voluntarily and she did not raise hue and cry while traveling with the accused in the entire journey. It is clear from the above evidence, that victim is the willing party who went with the accused voluntarily. No wonder, for this reason only victim admitted in her cross-examination that she sat in the vehicle of accused as per her free will.

Moreover, she clearly admitted in her cross-examination that she stated before the police that accused did bad works with her thrice with her consent. Her statement recorded under Section 164 CrPC also can not be relied as victim admitted in her cross-examination that she told before the learned Magistrate as told by her parents.

The informant (P.W.3) who is the father of the victim stated in his cross-examination that when he asked what she had done, his victim daughter did not tell any incriminating thing against the accused person to him when P.W.3

recovered his victim daughter from Shelter home at Vasco which was at a distance of 32 kms from the Vasco police station of Goa.

The conduct of the victim clearly shows that she voluntarily went with the accused. The conduct of the victim is not found natural had she been kidnapped or sexually assaulted by the accused person by force.

Further, other witnesses of this case, has not supported the alleged incident. P.W.4, P.W.5 and P.W.6 stated that they did not have any personal knowledge about the incident and they just heard about the alleged incident. Moreover, Prosecution side has failed to examine the friend of victim, who was present when accused took the victim with him in his vehicle.

The I.O. (PW 7) of the case stated in his cross-examination that victim Priyanka Das (PW-2) did not state before him that accused tried to insert his penis into her private part; that accused touched her chest and other parts of her body; that she informed her mother about the incident over telephone.

There is no material on record to hold that the accused kidnapped and committed rape on the victim, to constitute offence under Section 365 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012.

- 16). To bring home the guilt of the accused under Section 365 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.
- **17).** However, from to discussion made herein above, it is crystal clear that victim had all along voluntarily traveled the entire place as mentioned above with accused person. There is no evidence of kidnapped or raped to the victim at the relevant time of incident. **Victim herself has not supported the case of**

prosecution side to prove the alleged charges against accused.

18). It is cardinal principal of criminal Law that prosecution case has to

stand on its own leg and offence has to be proved against the accused beyond

reasonable doubt.

19). On scrutinizing the evidence on record, considering the entire

aspect of the matter and evidence, produced by the prosecution, I am of the

considered opinion that the prosecution has failed to establish that the accused

kidnapped the victim and committed rape on her. Hence, accused is entitled to

acquittal under the benefit of doubt, which I accordingly do.

20). In the result, accused Shyamal Ray @ Rajen is acquitted of

the charge under section 365 of IPC read with Section 4 of Protection of

Children from Sexual Offences Act, 2012, levelled against him, on benefit of

doubt.

The bail bond stands discharged.

21). Given under my hand and seal of this Court on this 12th day of

September, 2019.

Dictated & corrected by me.

Sd/-

Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Dr. Anima Boro, the M.O.,

P.W.2 = Priyanka Das, the victim,

P.W.3 = Dasarath Das, the informant,

P.W.4 = Atowar Rahman,

P.W.5 = Shahidul Islam,

P.W.6 = Ahadul Islam,

P.W.7 = Khagendra Nath Boro, the I.O.,

P.W.8 = Niranjan Das, the I.O.

(B) Prosecution Exhibits:

Ext.1 = Medical Report,

Ext.1(1) = Signature of M.O.,

Ext.2 = Statement of the victim recorded u/s

164 CrPC,

Ext.2(1), 2(2) &

2(3) = Signatures of the victim,

Ext.3 = Ejahar,

Ext.3(1) = Signature of Dasarath Das,

Ext.3(2) = Signature of O.C. Pankaj Das,

Ext.4 = Sketch Map,

Ext. 4(1) = Signature of ASI Khagendra Nath Boro,

Ext. 5 = Seizure list,

Ext. 5(1) = Signature of ASI Khagendra Nath Boro,

Ext. 6 = Charge-Sheet,

Ext. 6(1) = Signature of S.I. Niranjan Das.

(C) <u>Defence witnesses</u>: Nil.

(D) <u>Defence Exhibits</u>: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-Special Judge, Barpeta.