DISTRICT: GOLAGHAT.

HEADING OF JUDGMENT IN SPECIAL CASES:

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No. 36/2016.

Arising out of G.R. Case No.135/2016.

U/S 366 of IPC, read with Sec. 4 of POCSO Act.

Present :- Shri S. K. Sharma,

Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Shri Dhurba Das. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. T. Bordoloi,

Advocate, Golaghat.

Dates of evidence : 26.08.2016, 29.06.2018,

13.07.2018, 06.09.2018,

22.11.2018.

Date of argument : 17.03.2020.

Date of Judgment : 17.03.2020.

JUDGMENT:

- 1. The accused Shri Dhurba Das, son of Late Sumandar Das, resident of Enaighoria Kaibarta Gaon, under Derrgaon Police Station, District Golaghat, Assam, here in this case, has been put to face the trial to answer the charges under section 366 of IPC, read with Section 4 of POCSO Act.
- 2. The case of the prosecution as unfolded in the First Information Report (in short FIR) may, in brief, be described as under-

That on 29.01.2016, the informant Shri Raju Das has lodged an ejahar before the I/C of Sumonigaon Police Outpost alleging inter-alia that on 28.01.2016, at about 7 P.M., in the evening, his 16 years old daughter was missing from his house. Thereafter, the informant searched for his victim daughter but could not find her out. Later on, the informant came to know that the accused Dhurba Das has kidnapped his victim daughter.

- 3. On receipt of the written ejahar from the informant, the I/C of Sumonigaon Police Outpost recorded the case vide Sumonigaon Outpost GDE No.374, dated 29.01.2016 and forwarded the said ejahar to the O/C of Dergaon Police Station for registration of a case. Accordingly, on receipt of the ejahar, the O/C of Dergaon Police Station registered the case being Dergaon P.S. Case No.20/2016, u/s 366(A) of IPC and endorsed S.I. Shri Giridhar Bora to investigate the case. During investigation, the I.O. visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. The also got the victim examined by Doctor and collected the report and he also got the statement of the victim recorded in the Court. During investigation, the I.O. arrested the accused person and forwarded him to the Court. Thereafter, on completion of investigation, the I.O. submitted charge sheet against the accused u/s 366(A) of IPC, read with Section 4 of POCSO Act to stand tril in the Court.
- 4. On appearance of the accused person before this court, and after hearing learned counsels of both the sides, my learned predecessor has framed

charges against the accused under sections 366 of IPC, read with section 4 of POCSO Act and the contents of the charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

- 5. To bring home the charges against the accused, the prosecution side has examined as many as 6 witnesses including the M.O. After closing the prosecution evidence, the statement of the accused person has been recorded under the provision of section 313 of Cr.P.C. The accused declined to adduce evidence in his defence. The plea of the accused is total denial.
- 6. I have heard Mr. T. Bordoloi, learned counsel for the accused and Mr. P. Bora, learned Special Public Prosecutor for the State.

NOW THE POINT FOR DETERMINATION IS -

- 7. (i) Whether the victim was a child, as defined u/s 2(d) of the POCSO Act, at the time of occurrence ?
 - (ii) Whether the accused on 28.01.2016, at about 7 P.M., at night, at Enaighoria Kaibarta Gaon, under Dergaon Police Station, District – Golaghat kidnapped the victim girl with intent that she may be compelled to marry him against her will and thereby, committed an offence punishable under Section 366 of IPC as alleged?
 - (iii) Whether the accused on 27.01.2016 and thereafter also at Jorhat and at Bihar committed penetrative sexual assault upon the victim child and thereby, committed an offence punishable under Section 4 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

Point No.(i):

8. P.W.2 the mother of the victim has deposed that at the time of occurrence, the age of the victim was 16 years and at that time, she would have to

appear in HSLC examination, but she could not appear in the said examination due to the said occurrence. P.W.3 the informant of this case has deposed that the occurrence took place about two years back and at the time of occurrence, the age of the victim was 16 years. P.W.3 also deposed that he does not know the date of birth of the victim. He has denied defene suggestion that at the time of occurrence, the age of the victim was more than 18 years. P.W.5 has also deposed that he does not know the date of birth of the victim. The victim once failed in the school. He also does not know, if the age of the victim was more than 18 years at the time of occurrence. P.W.6 Dr. Sanjit Phukan has deposed in his evidence that on 21.03.2016, he was working at Kushal Konwar Civil Hospital, Golaghat as Senior Medical & Health officer. On that day, he examined the victim girl, resident of Enaighoria Gaon, under Dergaon Police Station, District - Golaghat in reference to Dergaon P.S. Case No.204/2016, vide GOPD Registration No.3891, on being escorted and identified by WPC-354 Smti. Mary Kardong. According to the X-Ray of right wrist joint, right elbow joint and right shoulder joint and X-Ray pelvis shows both proximal and distal epiphysis of radius and ulna are fused. Both medial and lateral condyle of humerus are fused. Bilateral epiphysis of illiac crests are fused. Bilateral epiphysis of ischeal tuberosity is not completely fused and hence, the age of the girl is above 18 years vide X-Ray No.2629, dated 21.03.2016. After examination, the Doctor, P.W.6 has opined that the age of the girl was above 18 years. Accordingly, P.W.6 issued Ext-2, the medical examination report and Ext-2(1) is his signature. Ext-3 is the report of Radiologist and Ext-3(1) is the signature of Dr. Vikash Sarmah, Radiologist.

9. There is no documentary evidence like Birth Certificate, School Certificate etc. to show the age of the victim girl and the medical evidence adverted to above must take precedence over the vague oral evidence of the P.Ws. regarding the age of the victim. Hence, it is not established that the victim was a child as defined u/s 2(d) of the POCSO Act at the time of occurrence. The Point is answered accordingly.

Point No.(iii):

10. In view of the finding in Point No.(i), this point is also answered in the negative.

Point No. (ii):

11. P.W.1 is the victim girl, who deposed in her evidence that she knows the accused person and the house of the accused is situated in front of her house. The occurrence took place in the month of January of the year 2016. She has love affairs with the accused. P.W.1 also deposed that prior to the occurrence, the elder brother of the accused cut her father and since then she avoided the accused person. Thereafter, the accused married one girl belonging to Tea Tribes and after about two days of the marriage, the mother of the accused returned the girl to her parents. Thereafter, the accused again wanted to do love affairs with her. P.W.1 also deposed that when she disclosed the matter to her family members then her mother rebuked the accused person. Thereafter, she went to the house of her grand mother to prepare meal and when she returned from there at about 7 P.M., in the evening, then the accused along with his 2/3 friends caught hold of her and then took her to Bihar and at that time, the mother of the accused also accompanied the accused. She was kept at Bihar in the house of a related person of the accused. P.W.1 also deposed that when she came to know that she was at Bihar then she tried to ring up to his father over mobile phone and then the accused broke down her mobile phone. When she told the accused that she would go to her house then the accused assaulted her. She stayed at Bihar along with the accused for about 10 days and in those period, no physical relationship was taken place between her and the accused. When she raised hulla to come to her house, then the related persons of the accused where they stayed sent the accused and his mother from there. Thereafter, the accused took her from there to Jorhat and kept her in the house of one relative of the accused for two days. Thereafter, she along with the accused surrendered at Sumonigaon Police Outpost and from there, they were taken to Dergaon Police Station. Thereafter, police got her examined by Doctor and also got her statement recorded in the Court. Ext-1 is her statement and Ext-1(1), Ext-1(2) and Ext-1(3) are her signatures. P.W.1 also deposed that at the time of occurrence, she was reading at Kakodonga Girls High School in Class X.

In cross examination, P.W.1 has stated that she does not know her date of birth. Earlier she once did not get promotion from Class IX. P.W.1 has denied defence suggestion that at the time of occurrence, her age was more than 18 years. She did not disclose in her statement recorded in the Court that she has love affairs

with the accused and she elopped with the accused at her own will. She also did not disclose in her statement that the accused allured her and forcefully took her. P.W.1 also stated that she did not state before police that the accused forced her and induced her.

12. P.W.2 is the mother of the victim, who deposed in her evidence that the informant is her husband. The occurrence took place on 28th day of January, 2016. On the day of occurrence, at about 7 P.M., in the night, her victim daughter went to the house of her in-laws who are living separately to prepare meal. Thereafter, her victim daughter did not return home and then she (P.W.2) went to search for the victim. P.W.2 also deposed that her father-in-law told her that the victim had already gone to her house. Thereafter, she searched for her victim daughter and when they did not find the victim then she and her husband went to Sumonigaon Outpost and thereafter, her husband lodged the ejahar. P.W.2 further deposed that prior to lodging the ejahar, she heard from the nearby people that accused Dhurba Das took the victim. Then after 20/25 days of the occurrence, she came to know that the accused and the victim appeared before the Police Station. When she (P.W.2) took the victim in zimma and asked the victim, then the victim told her that when she returned from the house of her grand father then the accused caught hold of her on the road and thereafter, the accused took her to Bihar and kept her there. At that time, the mother of the accused was also stayed at Bihar.

13. P.W.3 Shri Raju Das is the informant of this case. His evidence reveals that the occurrence took place about two years back. On the day of occurrence, at about 8 P.M., at night, the victim was missing from the house. Thereafter, he searched for the victim but could not find her out. Thereafter, he lodged the ejahar at Police Station. P.W.3 also deposed that after some days of the occurrence, the victim informed him over phone that the accused took her to Bihar and kept her there. Thereafter, he told the victim and the accused to come from there and when the victim and the accused came from there, then he handed over them to police.

In cross examination, P.W.3 has denied defence suggestion that the victim elopped with the accused due to their love affairs.

- 14. P.W.4 Smti. Punak Kumari Das has deposed in her evidence that she knows both the accused and the victim. The occurrence took place about one year back. On the next day of the occurrence, she heard from the mother of the victim that accused elopped the victim. At present, the victim is living in her house.
- 15. P.W.5 Shri Saruram Das has deposed in his evidence that the informant is his son and the victim is his grand daughter. The occurrence took place about two years back, at about 8 P.M., at night. On the day of occurrence, at night, the victim was missing from her house. Thereafter, on the next day, his son lodged the ejahar. After two months of the occurrence, police recovered the victim from Bihar.
- 16. As per the medical evidence adduced by P.W.6, sign of recent sexual intercourse not seen and no injury found on her private parts or body. The girl was carrying pregnancy.
- 17. If the victim is to be believed, the accused along with 2/3 friends, who presumably knew beforehand that she would be returning from her grand mother's house at about 7 P.M., caught hold of her and took her all the way to Bihar from Sumonigaon, Golaghat District in Assam. There is no mention whether she was taken by private or public transport, by road or rail. There is nothing to indicate that she raised any objection or alarm in course of such journey or any attempt at escape. There is also the fact of a prior love affair of the victim with the accused and moreover, even the mother of the accused accompanied them on their journey to Bihar and also stayed with them there and the victim is a fully grown girl of majority age. The story therefore, as it unfolded in course of the trial, has all the elements which points more towards voluntary elopement, rather than any forceful abduction or even one activated by inducement through deceitful means, in support of which there is no evidence whatsoever.
- 18. Further, the victim having deposed that no sexual intercourse took place between her and the accused during the period of stay in Bihar, the ingredients of being forced or seduced to illicit intercourse is also absent in the present case. Thus situated, the ingredients of the offence u/s 366 of IPC are not established in the instant case and the point is decided accordingly.

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19. In the result, I hold that the prosecution has failed to establish its case under Section 366 of IPC, read with Section 4 of POCSO Act against the accused. Consequently, accused Dhurba Das is acquitted of the said offences and set at liberty forthwith. His bail bond stands extended by further six months from today.

Given under my hand and seal of the Court on this the 17^{th} day of March, 2020.

(S. K. Sharma), Special Judge, Golaghat.

Dictated & Corrected by me.

Special Judge, Golaghat.

APPENDIX:

WITNESSES FOR THE PROSECUTION:

- 1. P.W.1 The victim girl.
- 2. P.W.2 Smti. Anjana Das.
- 3. P.W.3 Shri Raju Das.
- 4. P.W.4 Smti. Punak Kumari Das.
- 5. P.W.5 Shri Saruram Das.
- 6. P.W.6 Dr. Sanjit Phukan, M.O.

WITNESSES FOR THE DEFENCE: Nil.

EXHIBITS FOR THE PROSECUTION:

- 1. Ext-1 Statement of the victim recorded u/s 164 of Cr.P.C.
- 2. Ext-2 Medical examination report.
- 3. Ext-3 Report of Radiologist.

EXHIBITS FOR THE DEFENCEN: Nil.

Special Judge, Golaghat.