#### IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

Special POCSO Case No. 28 of 2018
(Arising out of Barpeta Road P.S. Case No.215/2018)
U/S 366(A) IPC R/W section 12 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

**Charge framed on:- 12.09.2018** 

State of Assam

- Vs -

Sohidul Islam.....Accused.

Date of Recording Evidence on - 30.10.2018, 09.11.2018, 22.01.2019

Date of Hearing Argument on - 28.01.2019

Date of Delivering the Judgment on - 05.02.2019

## **Appearance:**

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. M. Rahman &

Musstt. Hussain Perbin, Ld Advocates.

## <u>JUDGMENT</u>

- 1. The prosecution case, in brief, is that on 20.05.2018, one Manoruddin lodged an ejahar in Barpeta Road police station alleging inter-alia that accused No.1 named in the FIR allegedly followed his minor daughter (herein after referred to as the victim girl) aged about 15 years 2 months 10 days. Whenever, accused met her on the road or any places, offered his love to her thereby caused frequent harassment to her and about 20 days back he persuading her took her away by crossing the river. Subsequently, accused was brought and there was a meeting in the society where accused No.2, who is the father of accused No.1 under take to take his daughter on condition that when his son will attained majority, he will marry the girl but later on, accused No.1 married another girl. It is also stated that on 19.05.2018 at about 6-10 pm accused No.2 by hatching a conspiracy with accused No.1 took his daughter in a motor cycle to their residence and tried to kill her. Hence the case.
- 2. Following the information as above, Barpeta Road police station registered a case being Barpeta Road PS case No.215/18 u/s 366-A/417/34 IPC R/W Section 4 of POCSO Act and took up investigation.
- 3. During the course of investigation, police visited the place of occurrence,

recorded the statement of the witnesses, forwarded the victim girl to court for recording her statement u/s 164 Cr.P.C., drew sketch map, sent the victim girl for medical examination, collected the medical examination report and also arrested the accused and on conclusion of investigation police finally laid the charge sheet against accused Sahidul Islam u/s 366-A/417 IPC R/W section 12 of POCSO Act with a view to stand trial.

- 4. During the course of time, when accused entered his appearance in court to face trial, all the relevant documents were furnished to accused as mandated under section 207 Cr.P.C. Thereafter, vide order dated 12.09.2018 having heard the learned lawyers appearing for both sides and also perusing the materials available on record, having found a prima facie case charges u/s 366-A IPC R/W Section 12 of POCSO Act are framed. The particulars of the offences on being read over and explained accused pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution in order to bring home the guilt of accused examined as many as 6 witnesses namely- Manoruddin as PW-1, victim girl (X) as PW-2, Sahanur Khatun as PW-3, Abdul Halim as PW-4, Gajibar Rahman as PW-5 and Bidhan Singh Basumatary as PW-6.
- 6. During the course of trial, prosecution also exhibited the FIR as Ext.1. Signature of informant as Ext.1(1). The statement of the alleged victim girl recorded u/s 164 Cr.P.C. as Ext.2 and her signatures as Ext.2(1) to 2(3). Sketch map as Ext.3 and signature of I/O as Ext.3(1). Medical report of the victim girl as Ext.4. Charge sheet as Ext.5 and signature of I/O as Ext.5(1) respectively.
- 7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. However, accused denied the evidence of the prosecution as false and misleading. On the other hand, on being asked accused declined to adduce defence evidence. His stand is total denial of the prosecution case.

# 8. Now point for determination ;-

- 1. Whether on 19.05.2018 at about 6-10 pm accused kidnapped or abducted minor daughter of the informant with intent or knowing it to be likely that she might be compelled to marry any person including him or knowing it likely that she might be forced or seduced to illicit intercourse by means of force with him as alleged?
- 2. Whether the accused utters with sexual intent bad languages towards victim girl whenever he met her on the road or elsewhere and also repeatedly and constantly follow her on her way to school or watches her or tried to contact her on regular basis and thereby committed an offence punishable u/s 12 of POCSO Act as alleged?

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

I have heard the arduous contention of the learned lawyers appearing for both sides.

- 10. At the first instance, the learned Addl. P.P. Smti Priti Das appearing for the State contended that from the evidence of the prosecution witnesses namely PW-1, PW-2, PW-3 and PW-5 it is crystal clear that accused kidnapped the victim girl who is a minor girl then as she was reading in Class X on the date of incident. She was taken by accused crossing the river but she was brought back and there was a meeting of the society wherein members of accused side offered to take the girl to their house after two years. The victim girl in her evidence stated that accused followed her whenever he met her on the road on her way to school or elsewhere and one day while the girl was proceeding towards school alone accused took her from the road by force to the Char of Beki River and tried to commit sexual intercourse by force. Therefore, the fact that accused kidnapped the girl without her consent is established which attracts the offence u/s 366-A IPC. On the other hand, accused also constantly and repeatedly follow and watches her with sexual intent on her way to school. The said act of accused also well attract the ingredients of offence u/s 11 of POCSO Act punishable u/s 12 of the said Act. It is vehemently contended that there is credible and corroborative evidence regarding the commission of these two offences and there is no reason to disbelieve the evidence of the victim girl and her parents. Though the evidence of PW-4 and PW-5 does not assist the prosecution but the evidence available on record is sufficient to hold the accused guilty. As the evidence of PW-6 the I/O substantiated the evidence of PW-1 and PW-2 and there is no such major contradiction or inconsistencies in the evidence of witnesses recorded by I/O with that of the evidence adduced in court. Therefore, the learned Addl. P.P. submits that it is a fit case for sustaining conviction u/s 366-A IPC R/W section 12 of POCSO Act. As such, it prayed that accused may be adequately dealt with.
- 11. On the other hand, the learned defence counsel Mr. Mokibor Rahman appearing on behalf of the accused person vehemently disputed the submission made by the learned Addl. P.P. According to the learned defence counsel, there is absolutely no credible evidence against the accused person for sustaining conviction u/s 366-A IPC R/W section 12 of POCSO Act. It is submitted that the evidence of PW-1, PW-2 and PW-3 cannot be trusted or relied on as these three witnesses are interested witnesses being the father, mother and the alleged victim girl. Therefore, there is every likely hood of false implication of the accused out of personal grudge. Moreover, the evidence of victim girl contradicted her previous statement recorded by I/O during course of investigation which has been confirmed by I/O during the course of his cross examination. In her statement before police, the victim girl never stated that she was reading in school and accused frequently disturbed her on her way to school. But in her

evidence in court and in her statement recorded by Magistrate u/s 164 Cr.P.C. she improved her evidence and stated that she was disturbed by accused on her way to school and one day she was kidnapped by accused crossing the river. In her statement u/s 164 Cr.P.C. she falsely implicate the accused that on 18.06.2018 he took her to his house from the road, put her in the house, assaulted her, using filthy languages. This fact has not been stated by her in the course of her evidence in court. Therefore, the evidence of the victim girl is inconsistent and contradictory and no reliance can be placed on her evidence. The evidence of PW-1 and PW-3 also cannot be relied on as they were not eye witnesses to the alleged kidnapping and use of language having sexual intent towards the girl on her way to school and making attempt to contact her on regular basis. Had the fact been true PW-4 and PW-5 could have deposed about it being the resident of the same village but they expressed their ignorance about their incident. Therefore, the learned counsel for the accused person contended that the prosecution evidence is totally inconsistent to hold the accused guilty of offences u/s 366-A IPC R/W section 12 of POCSO Act. In the absence of clear and cogent evidence no conviction can be sustained on the basis of mere presumption only. Therefore, the learned counsel contended that it a fit case to record the judgment of acquittal.

- 12. Having heard the arduous contention of the learned counsels appearing for both sides, this court carefully read the contents of the FIR (Ext.1) the evidence of the witnesses and statement of the victim girl recorded by Magistrate u/s 164 Cr.P.C. (Ext.2). The medical report Ext.4 for arriving at a just decision in the case.
- 13. Having read the evidence of the witnesses between the lines in the context of submission made by the learned counsel appearing for the state as well as on behalf of the accused person it is found that there is specific allegations of kidnapping of the minor daughter of the informant by accused person which fact has been narrated in the FIR (Ext.1) and corroborated by alleged victim girl in her statement recorded by Magistrate u/s 164 Cr.P.C. as well as her evidence in court. Her evidence has also been corroborated by PW-1 and PW-3 who were her father and mother. It appears from the evidence that accused induced the girl under the age of 18 years and he induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with him and that the inducement caused the girl to go from the road to char of Beki River or to do any act. This fact has also been supported by the evidence of I/O (PW-6) in his evidence. Therefore, from the evidence on record and documents available, the ingredients of the offence u/s 366-A IPC appears fully attracted. Now, the question before this court is to believe or not to believe the evidence of the witnesses. Though the learned defence counsel disputed the fact and submitted that no reliance can be placed on the evidence of the parents of the victim girl but this court after careful consideration do not find any justification to disbelieve or discard this evidence of parents branding them as untrustworthy. The admitted evidence before the court is that accused kidnapped the girl from the road and she stated clearly that at that time she was reading in Class VIII. The age of the girl who is

reading in Class VIII at the time of incident is understandable. In her statement before Magistrate the girl stated her age to be 15 years and in her evidence also she reiterated the same age and in his evidence of PW-1 also stated that the age of the girl was 15 years. Though the girl was examined by doctor X-Ray was not done. Therefore, doctor could not ascertain her actual age. But this fact in the considered view of the court does not lead to the inference that the victim girl was major on the date of alleged commission of the offence. Though the prosecution has not proved the age of the victim girl by way of proving the birth certificate of the girl. Nevertheless, in her statement recorded before Magistrate u/s 164 Cr.P.C. as well as in her deposition in court the victim girl clearly stated her age as 15 years which fact has been corroborated by the oral evidence of her father namely-PW-1 Manoruddin. Though the defence cross examined PW-1 Manoruddin and the alleged victim girl at length but failed to discredit him regarding her age. Therefore, in the absence of any contradiction as to the actual age of the victim girl on the date of commission of the offence the evidence of the prosecutrix and her father regarding her age is found believable. The victim girl hails from rural backdrop and she and her father is not suppose to conceal her actual age. When the defence failed to discredit the prosecutrix and her father regarding the age of the prosecutrix by way of effective cross examination the presumption that can be raised by court is that the girl was minor under the age of 18 years on the date of commission of the offence. This presumption is drawn by this court on the strength of section 4 of the Indian Evidence Act after a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. When the defence failed to disprove or dispell or rebut the fact that the girl was not minor on the date of commission of the offence by way of effective cross examination the presumption regarding her minority on the date of commission stands proved on the circumstances of the case.

14. In the instant case, the fact that the girl was minor on the date of occurrence on 19.05.2018 and that accused induced her to go from one place to another I.e the bank of Beki River and she was induced by accused with intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person including himself stands proved. On assessment of evidence of the prosecutrix (PW-2), the informant (PW-1), the mother of prosecutrix (PW-3) this court also found that accused person utters words or makes sound that the victim girl must love him and he constantly and repeatedly follow her for two years on her way to school and whenever he met her and forced her to go to the river bank with sexual intent is fully corroborated by the evidence of her parents. So, the act of accused clearly falls under the parameters of offence u/s 11 of POCSO Act punishable u/s 12 of the said Act. The fact that the victim girl was constantly followed, disturbed and harassed by accused with sexual intent has been clearly narrated by her in her statement recorded before Magistrate u/s 164 Cr.P.C. Ext.2 and defence failed to discredit her in the course of cross examination on this vital point.

- 15. The argument of the learned defence counsel that in the absence of any corroboration from the evidence of independent witnesses the evidence of PW-1 and PW-3 who are the parents of the prosecutrix cannot be trusted as their evidence is interested one and they naturally deposed false evidence to substantiate the stand of their daughter but this court after careful examination of their evidence found the evidence of the prosecutrix and her father and mother credible and trustworthy. Given the nature of the offence no independent witness will come forward to support the version of parents. Moreover, the evidence of parents are the most natural one and they are not expected to tell a blatant lie. There is no reason to disbelieve their version as unworthy of credit.
- 16. It is to be noted that the crime against women particularly against the minor girls who are vulnerable have become the easy pray of the predators who exploited every opportunity and committed the crime whenever, they found the girl alone. Such offences are in rise in alarming proportion and if the predators are allowed to go scot free only on technicalities of law the offences against minor girls will go on increasing and off late, it become the prime concern of every right thinking citizen of the society. As such, unless such predators are not adequately dealt with no signal will go to such offenders and there will be no chance recording such heinous crimes in the society.
- 17. Therefore, considering all the aforesaid evidence, this court comes to unerring conclusion that the prosecution has been able to establish the offence against accused Sohidul Islam u/s 366-A IPC R/W section 12 of POCSO Act. Accordingly, accused is found guilty and convict him for the aforesaid offences.
- 18. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case and the age of the accused the nature of the offences committed, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused.

### SENTENCE HEARING

- 19. I have heard the accused persons on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused person hails from very poor strata of society and survives by doing labour. He is very young and married. So, in the event he is put behind bar his innocent family members would suffer a lot. Hence, accused pleaded clemency.
- 20. Heaving considered all the attending facts and circumstances and the extenuating and mitigating circumstances of the case and the punishment prescribed in section 366(A) IPC as well as u/s 12 of POCSO Act, 2012 accused is convicted and sentenced to under go Rigorous imprisonment for a term of 5 years (five years) and fine of Rs.2000/- u/s 366(A) IPC i/d S/I for 3 three months. Accused is also convicted and sentenced to under go R/I for 3 (three) years and fine of Rs.1000/- u/s 12 of POCSO Act I/d S/I for three months. The sentences will however run concurrently.

- 21. The period of detention, if any, undergone by accused during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.
- 22. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 23. Let copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 24. Given under my hand and seal of this Court on this 5th day of February 2019.

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 6 nos. of witnesses :-

PW-1 = is Manoruddin, the informant.

PW-2 = is victim(X).

PW-3 = is Sahanur Khatun.

PW-4 = is Abdul Halim.

PW-5 = is Gajibar Rahman.

PW-6 = is Bidhan Singh Basumatary, the I/O.

2. The prosecution has exhibited following document :-

Ext.1 = is the FIR.

Ext.= 1(1) = is the signatures of informant.

Ext.2 = is the 164 Cr.P.C. statement of victim recorded by Magistrate.

Ext.2(1), 2(2) & 2(3) = are the signatures of victim.

Ext.3 = is the sketch map.

Ext.3(1) = is the signature of I/O.

Ext.4 = is the medical report.

Ext.5 = is the charge sheet.

Ext.5(1)= is the signature of I/O.

Sd/-

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