IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 23(DH)/ 2017.

U/S 366 of IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

Shri Jayanta Gogoi,

S/O Ghanashyam Gogoi,

Vill. Jorkata Chamua Gaon, Machkhowa,

P.S. Dhemaji,

Dist.- Dhemaji.

.....Accused Person

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri J. Buragohain, Advocate

.....For the Accused

Date of prosecution evidence : 13-05-2019.

Date of argument

: 25-10-2019.

Date of Judgment

: 08-11-2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 30-08-2017 complainant-Smt. Pratima Boruah lodged an ejahar with Dhemaji Police Station alleging interalia that on 25-04-2017 at 8.30 AM in the morning while her minor daughter Smti 'X' (real name is withheld), aged about 14 years was going to her school, the accused-Jayanta Gogoi took away her daughter on a motor cycle from the road. It is also alleged in the ejahar that while the accused and the victim went to accused's house, the father of the accused, sent them away from their house.
- 2. On receipt of the ejahar, Police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person u/s 363/34 of IPC.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 366 of IPC R/W Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

4. Points for determination:

- (1) That you, on 25-04-2017 you kidnapped Smti 'X', a minor girl to Guwahati with intent that she might be compelled to marry any person against her will and thereby you committed an offence punishable u/s 366 of IPC.
- (2) That you, on the same day, took the victim girl below the age of 18 years, to Guwahati and in a Hotel committed penetrative sexual intercourse with her and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.



Discussion, Decision and Reasons thereof

6. **PW1 Smt. 'X' (victim girl)** stated the complainant is her mother. She knows the accused. The incident took place in the year 2017. She had love affair with the accused. On the date of occurrence, she along with the accused-Jayanta went to Hanuman Mandir at Gogamukh. As she did not return home till night, her parents were worried and they lodged complaint before Police. Thereafter, she appeared before police. The accused did not physically abuse her. At the relevant time, she was aged about 18 years.

In cross-examination PW1 stated that she has no objection if the accused is acquitted in this case.

7. **PW2 Smti Pratima Baruah** stated that she is the complainant. She knows the accused. Victim Smt. 'X' is her daughter. The incident took place in the year 2017. On the date of occurrence, her daughter along with the accused-Jayanta went to Hanuman Mandir at Gogamukh. As she did not return home till night, they were worried and she lodged complaint before Police. Thereafter, she (victim) and the accused appeared before police. At the relevant time, she (victim) was aged about 18 years. She has no objection if the accused is acquitted in this case. Exhibit-1 is the ejahar and Exhibit-1(1) is her signature.

Appreciation of evidence :

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Smti Pratima Barusah were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that on the day of occurrence the victim and the accused went to Hanuman Mandir at Gogamukh. The victim had love affairs with the accused. As the victim did not return home till night, parents of the victim worried and the complainant (PW2) lodged complaint at the Police Station. Thereafter, the victim and accused appeared at the Police Station. According to the victim, the accused did not physically abuse her. At the relevant time of occurrence, the victim was aged about 18 years. PW2 stated that she has no objection if the accused is acquitted in this case. In cross-examination, PW1 also stated that she no objection if the case ends in acquittal.



- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of absence of evidence. It is also seen from the evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused. I find that the prosecution has totally failed to prove the charges u/s 366 of IPC read with Sec.- 4 of the POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Jayanta Gogoi** not guilty u/s 366 of the I.P.C. read with Section-4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 8th day of Nov./2019.

(S. Das)
Special Judge,
Phemaji.