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

<u>PRESENT</u> - M.A.Choudhury, Special Judge,

Lakhimpur, North Lakhimpur.

#### SPECIAL CASE NO.83/2018.

Under Sections - 366(A) IPC RW Sec.4 of the POCSO Act.

#### **PARTIES**

State of Assam. ... Complainant. -versus-

Sri Bidyut Bora. ... Accused.

#### **APPEARANCE**

Mr. Madhab Gogoi, Special Public Prosecutor. ..... For the State of Assam. Mr. Suren Bora, Advocate. ..... For the Accused.

Date of charge : 06.06.2018.

Date of taking evidence : 08.06.2018.

Date of hearing Argument : 08.06.2018.

Date of delivery of Judgment : 08.06.2018.

#### **JUDGMENT**

1. The case of the prosecution side, in brief, is as follows:

The informant, Sri Dadu Pegu on 20.04.2018 lodged an ejahar with Boginadi Police Station to the effect that on 18.04.2018 at night, his younger sister, the victim 'X' was found missing from his house. Thereafter, they searched for the victim 'X' in several places, but could not get any trace of her. While they were searching for the victim 'X', they came to know that the victim 'X' was eloped by the accused, Sri Bidyut Bora.

- 2. On receiving the ejahar, the Officer-in-charge of Boginadi Police Station registered a case vide Boginadi PS Case No.75/2018 under Section 366(A) IPC and entrusted Sri Priyabrat Gogoi, SI of police of Boginadi P.S. with the charge of investigation of the case. The I.O. on taking the charge of investigation of the case, visited the place of occurrence and recorded the statements of the witnesses u/s 161 CrPC. The I.O. of the case recovered the victim 'X' and forwarded her to the court for recording her statement u/s 164 CrPC, and accordingly, the statement of the victim 'X' got recorded u/s 164 CrPC. The I.O. arrested the accused, Sri Bidyut Bora and forwarded him before the court. The I.O. got the victim girl 'X' medically examined by doctor at North Lakhimpur Civil Hospital. After completion of investigation of the case, the I.O. of the case submitted the charge-sheet against the accused, Sri Bidyut Bora under Section 366(A) IPC and under Sec.4 of the POCSO Act.
- 3. The accused made his appearance before the court. The necessary copies were furnished to him.
- 4. After hearing the learned advocates of both sides and perusing the case record, sufficient materials under Section 366(A) IPC and under Sec.4 of the POCSO Act had been found against the accused person in the case record, and accordingly, charges under Section 366(A) IPC RW Sec.4 of the POCSO Act were framed against the accused person. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution side in course of trial examined 3 (three) witnesses. 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.
  - 6. The accused person led no evidence in his defence.

7. Heard the Argument from the learned advocates of both sides.

#### 8. The points for determination in this case are:

- (I) Whether the accused, Sri Bidyut Bora on 18.04.2018 at about 8 pm at Badhakara Musaichuk gaon under Boginadi PS had induced the victim 'X', a minor girl below the age of 18 years to go from her house along with him with intent that the victim 'X' might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with him?
- (II) Whether the accused person after kidnapping the victim 'X', a minor girl, committed penetrative sexual assault upon her person?

### 9. <u>DECISION AND REASONS</u>:

The prosecution side has examined 3 (three) witnesses. PW.1 is the victim 'X'. PW.2, Sri Dadu Pegu is the elder brother of the victim 'X'. PW.3, Smti Nishi Pegu is the mother of the victim 'X'.

PW.1, the victim 'X', in her evidence, stated that she knows the accused, Sri Bidyut Bora, whose house is situated in her village. She also stated that during last 'Rangali-Bihu', she along with other girls and boys of their village including the accused had performed 'Bihu' dance in the locality. She, in her evidence, also stated that one day during last 'Rangali-Bihu', she, other members of their 'Husori' party and the accused had gone to enjoy a party at the bank of river, 'Subansiri', and as there was late in returning back to her house, her elder brother, Dadu Pegu lodged an ejahar with the Police Station. Thereafter, on the same day, she returned back to her house. She, in her evidence, also stated that the accused, Sri Bidyut Bora had not taken her away along with him. She also stated that the accused, Bidyut Bora had not performed any sexual intercourse upon her.

She, in her evidence, did not implicate the accused person regarding commission of any offence.

PW.2, Sri Dadu Pegu, who is the elder brother of the victim 'X', in his evidence, stated that the victim 'X' is his younger sister. He also stated that the house of the accused, Sri Bidyut Bora is situated in his village. He went on stating that during last 'Rangali-Bihu', his sister, victim 'X' along with other boys and girls of his village and the accused made a group of 'Husori' party and performed 'Bihu' dance in the locality. He also stated that during the 'Bihu' period, one day, his sister victim 'X' was not in the house, then he lodged the ejahar alleging that the accused, Sri Bidyut Bora had kidnapped his sister, victim 'X', and thereafter, his sister victim 'X' came back to his house and stated that she had not eloped with the accused. She had gone to enjoy a party along with the boys and girls of their village near the bank of river, 'Subansiri'. He, in his evidence, also stated that he had lodged the ejahar on misconception, and the accused had not kidnapped his sister, victim 'X' nor done any other sexual act with his sister, victim 'X'. He, in his evidence, did not implicate the accused person in commission of any offence.

PW.3, Smti Nishi Pegu is the mother of the victim 'X'. She, in her evidence, stated that she knows the accused, Sri Bidyut Bora, whose house is situated in her village. She also stated that during last 'Rangali-Bihu', her daughter, victim 'X' along with the boys and girls of their village and the accused had performed 'Bihu' dance in the locality by forming a group. She further stated that during the last 'Rangali-Bihu', her daughter victim 'X' along with the boys and girls of their village and the accused, Bidyut Bora had gone to enjoy a party near the bank of river, 'Subansiri'. She, in her evidence, further stated that as her daughter victim 'X' became late in returning back to their house, her son, Dadu Pegu lodged an ejahar with the Police Station alleging that the accused had taken away her daughter, victim 'X', and thereafter, her daughter victim 'X' came back to her house and stated that she had not eloped with the accused, she had gone to enjoy a party along with the boys and girls of their village. She, in her evidence, stated that the accused had not kidnapped her daughter, victim 'X'. She

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also stated that the accused had not done any sexual offence upon her daughter, victim 'X'. She, in her evidence, further stated that this case had been lodged by her son on misconception. There is no material in her evidence against the accused person regarding commission of any offence.

10. On careful scrutiny of the evidence adduced by the prosecution witnesses, it is found that the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Section 366(A) IPC RW Sec.4 of the POCSO Act brought against the accused person, Sri Bidyut Bora and the accused person deserves to be acquitted.

11, I, therefore, hold the accused person, Sri Bidyut Bora not guilty and acquit him from the charges under Section 366(A) IPC RW Sec.4 of the POCSO Act. The accused person is set at his liberty forthwith.

12. The seized original copy of the Admit Card of H.S.L.C. Examination of the victim X be returned back to the person, from whom it was seized.

\$13.\$ Given under my hand and the seal of this court on this the  $8^{\text{th}}$  day of June. 2018.

( M. A. Choudhury ) Special Judge, <u>Lakhimpur, North Lakhimpur.</u>

Dictated & corrected by me -

( M.A.Choudhury ) Special Judge, Lakhimpur, North Lakhimpur. Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

## **APPENDIX**

# 1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Victim girl X.

PW.2 – Sri Dadu Pegu.

PW.3 – Smti Nishi Pegu.

### 2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil.

#### 3. DOCUMENTS PRODUCED IN THE CASE:

Nil.

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