IN THE COURT OF THE DISTRICT & SESSIONS JUDGE CUM SPECIAL JUDGE-2(FTC)(POCSO) :: TINSUKIA

District: Tinsukia

Present: Md. A. Hakim,

District & Sessions Judge cum Special Judge-2(FTC),

(POCSO)Tinsukia.

POCSO Case No. 71(M)/17 U/s 363 of the IPC & 4 OF POCSO Act

	The State of Assam
	Complainant
	-Versus -
	Cri Arrus Darrus
	Sri Arup Barua
	S/o- Sri Hiranya Baruah,
	R/o- A.P.O Colony, Margherita,
	P.S- Margherita,
	District- Tinsukia, Assam.
	Accused.
Appearance:	
Арреагансе.	
Sri B.L Agarwal	
Spl. Public Prosecutor	For the Complainant
Mr. P.P Hazarika	
Advocate	For the accused.

Date of evidence: 10.12.18, 19.01.19.

Date of Argument: 28.02.2019. Date of Judgment: 28.02.2019.

J U D G M E N T

- 1. The prosecution case in brief is that on 01.12.17 at about 8 A.M the 17 years old only daughter of the informant went to school for her regular practice. But when she did not return home till 6 P.M after her tuition, the informant made various search and being failed to find her everywhere they suspected that the accused may have kidnapped his minor daughter who had love affairs with his daughter. It is mentioned in the FIR that the victim girl was 17 years of age at the time of her abduction. The informant had submitted the birth certificate and photograph of his daughter alongwith the FIR. Hence, the case.
- 2. Receiving the FIR, Margherita P.S. registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused and forwarded to face the trial.
- **3.** Upon receiving the record and appearance of the accused in this court and upon hearing both sides and considering the materials on record charge u/s U/s 363 of the IPC & 4 of POCSO Act had been framed, particulars of which on being read over and explained, the accused had pleaded not guilty and claimed to be tried.
- **4.** During trial, prosecution examined Four (4) witnesses. The accused is exempted from examination u/s 313 Cr.P.C as no material ingredients of offence is found against the accused.
- **5.** I have heard argument put forth by the ld. Counsel for both the sides as well as gone through the entire materials available on record.

6. POINT FOR DETERMINATION :-

- (i) That the accused on 01.12.17 at Margherita in the district of Tinsukia had kidnapped the victim, the 17 years minor daughter of the informant from her lawful guardianship and thereby committed an offence punishable U/s. 363 IPC?
- (ii) Whether the accused on the same day had committed penetrative sexual assault upon the victim girl and thereby committed an offence punishable U/s. 4 of POCSO ACT?

DISCUSSION, DECISION AND REASONS THEREOF:

7. P.W.1, Sri Pranab Gogoi has deposed that the victim is his daughter. She was born on 17.03.2000. He knows Arup Barua after the incident. The incident took place on 01.12.17. At that time his daughter was studying in Class XII and was preparing for her Higher Secondary examination. At about 8 AM she came out of the house to attend her school and when she did not return till 6 P.M. we got worried and searched her. And on enquiry he came to know that she had affairs with accused Arup Barua and she might have eloped with him. He therefore, lodged an ejahar at the Police station. Ext. 1 is the ejahar, Ext. 1(1) is his signature. After nine days his daughter was recovered by the police from some place, Simaluguri, Sibsagar. After her recovery she was given in his custody. On enquiry from his daughter he came to know she has been maintaining affairs with the accused and she out of her own will had married with the accused. After her recovery she was sent by the police for her medical examination and she was also

produced before the Magistrate to record her statement U/s. 164 Cr.P.C. At present she is living with the accused Arup Barua as his wife; as after attaining her majority she again eloped with the accused. He has got no grievances for her staying with the accused.

- **8.** In Cross-examination he has stated that he involved the name of the accused in the FIR on suspicion. He does not know whether the accused was there at the time of the recovery of the victim. He denies the suggestion that he has lodged a false case against the accused.
- 9. P.W.2, Smt. Hiranya Gogoi has deposed that the victim is her daughter. She was born on 17.03.2000. She knows accused Arup Barua after the incident. The incident took place on 01.12.17. At that time her daughter was studying in Class XI and was preparing for her Higher Secondary examination. At about 8 AM she came out of the house to attend her school and when she did not return till 6 P.M they got worried and searched her. And on enquiry she came to know that she had affairs with accused Arup Barua and she might have eloped with him. Therefore her husband lodged an ejahar at the Police station. After nine days her daughter was recovered by the police from some place, at district Sibsagar. After her recovery she was given in their custody. On enquiry from her daughter she came to know she has been maintaining affairs with the accused. After her recovery she was sent by the police for her medical examination and she was also produced before the U/s. 164 Magistrate to record her statement Cr.P.C. Thereafter; after attaining majority victim again eloped with the accused and at present she is living as wife of the accused him. They have no objection in with their relationship.

- 10. In Cross-examination she has denied the suggestion that her daughter did not elope with the accused. Her daughter/victim always denied about the relation between her and the accused. They have named the accused on suspicion without any sufficient proof.
- 11. P.W.3, the victim has deposed that she she was born on 17.03.2000. She knows accused Arup Barua also who is now her husband. The present case was lodged on 01.12.17. At that time she was studying in Class XI and was preparing for her Higher Secondary examination. On that day she had come out of the house to attend the school but instead she went to Sibsagar alone. There she stayed at the house of one of her relative brother, Lohit Gogoi. After three or four days police recovered her from the house of Lohit Gogoi. After her recovery police sent her for medical examination and also produced before Magistrate to record her statement. Ext.2 is her statement recorded U/s. 164 Cr.P.C. Ext. 2(1) and 2(2) are her signatures. Thereafter she was given in custody of her parents. Thereafter after attaining majority she eloped voluntarily and married with the accused in the month of March'18. Now she is living with the accused as his wife.
- 12. In Cross-examination she has stated that due to misunderstanding her father had lodged this case against the accused person. The accused did not try to create any physical contact with her prior to her marriage. She does not want to proceed this case against the accused.
- 13. P.W.4, Dr. (Mrs.) Suravi Borah has stated that on 10.12.17 she was working as M.O. N H.M at Margherita FRU. That day at about 8:30 P.M she examined the victim in connection with Margherita P.S case no. 254/17 under sec. 363 IPC. She was brought and identified by WHG, Smt. Nalini

Das of Margherita Police station. The victim was examined in presence of GNM Nomita. She was examined in connection with allegation of elopement on 01.12.17.

On examination she found as follows:

Mental Status - normal.

Height - 5 feet, Weight 62 KG, Teeth - Total 28

Abdomen - soft,

Breast, Areola and Nipples - developed.

Scalp hair, Public hair and Axilary hair - present.

Genitals - developed and normal.

Vulval injury - not present at the time of examination.

Labia Minora and majora - developed.

Hymen - not intact

Vagina - normal and developed.

Uterus - not palpable.

Vaginal discharge - not present at the time of examination.

Injuries on the body other than genitals - not present at the time of examination.

The victim was sent for Radiological examination and USG report. The Radiological examination shows her age is in between 19 to 21 years and USG report shows normal study. Urine for B/HCG Test - Negative.

The slide for vaginal smear does not reveal any spermatozoa.

OPINION - In her opinion her age is between 19 to 21 years. There is no any injury mark on her body as well as private parts. The vaginal smear does not show any spermatozoa. Therefore it could not be ascertained the victim has been raped or not.

Ext. 3 is Medical report. Ext. 3(1) is her signature.

Ext. 4 is the report of the Laboratory,

Ext. 5 is the Radiological report with x-ray plate,

Ext. 6 is the USG report with images, Ext. 6(1) is the signature of Dr. K.C Das, she is conversant with his signature.

- **14.** The Cross-examination is declined by the defence.
- 15. With regard to the point for determination Ld. counsel for the defence has pointed out that prosecution has failed to prove the case beyond reasonable doubt. The complainant and the victim girl have not alleged that the accused had kidnapped the victim nor committed rape on her. The medical evidence has proved that the victim girl was major at the time of the alleged incident. Hence the accused person should be acquitted and set at liberty.
- **16.** In reply Id. P.P has admitted that the victim and the other witnesses have failed to implicate the accused.
- 17. Upon hearing both sides, I have gone through the material evidence on record and found that the victim girl i.e. PW 3 has deposed that on the day of the incident she has come out of the house to attend the school but instead she goes to Sibsagar alone. There she stays at the house of one of her relative brother, Lohit Gogoi. After three or four days police recover her from the house of Lohit Gogoi. In Cross-examination she has stated that due to misunderstanding her father has lodged this case against the accused person. The accused has tried to create any physical contact with her prior to her marriage.
- 18. The complainant PW 1 i.e. the father of the victim and the PW 2 i.e. the mother of the victim have deposed in course of cross-examination that the name of the accused is given in the FIR on suspicion. It is also revealed from the medical evidence (PW 4) that the victim is aged about between 19 to 21 years at the time of the incident. As the prosecution has failed to prove the age of the victim girl contrary to the medical evidence I am of the considered view that the victim girl was major at the time

of the incident.

- 19. As the victim girl was a major at the time of the alleged incident and as the complainant and the victim girl have not alleged anything against the accused person I am of the considered opinion that the Prosecution has failed to prove the case against the accused U/s. 363 IPC and S. 4 of POCSO Act beyond all reasonable doubts. Hence, the accused Sri Arup Barua is acquitted and set at liberty.
- **20.** The Prosecution is directed to dispose of the seized material in accordance with law.
- **21.** Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.
- **22.** The case is disposed of herewith.
- **23.** Given under her hand and seal of this court on this the 28th day of February, 2019.

Dictated & corrected by me:

(A. Hakim),
District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

(A. Hakim),
District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

A N N E X U R E

PROSECUTION WITNESSES:

P.W.1, Sri Pranab Gogoi,

P.W.2, Smt. Hiranya Gogoi,

P.W.3, the victim &

P.W.4, Dr.(Mrs.) Suravi Borah

PROSECUTION DOCUMENTS:

Ext. 1, is the Ejahar,

Ext. 2 is the U/s. 164 Cr.P.C statement of the victim,

Ext. 3 is the Medical Report,

Ext. 4 is the report of the Laboratory,

Ext. 5 is the Radiological report with x-ray plate,

Ext. 6 is the USG report with images.

(A. Hakim),
District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.