IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 24 (DH)/ 2018.

U/S 366/376 of IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

1. Shri Lalbabu Rai @ Rajib

S/O Swapan Rai, Vill. Paul Potty,

P.S. Silapathar,

Dist.- Dhemaji.

.....Accused Person

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri K.C. Sonowal, Advocate

.....For the Accused

Date of prosecution evidence

: 04-12-2018.

Date of argument

: 04-12-2018.

Date of Judgment

: 14-12-2018.

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Dhemaji.

JUDGMENT

- 1. The prosecution case, in brief, is that on 26-11-2017 complainant- Nizam Ali lodged an ejahar with Silapathar Police Station alleging interalia that on 22-11-2017 in the evening at about 6.30 PM while his (complainant's) minor daughter -Smti 'X' (name is withheld) was going to the housed of Miss Rasida Begum of their same village, the accused-Lalbabu Rai kidnapped/abducted her from the road.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused person u/s 366 of IPC R/W Sec. 4 of the POCSO Act.
- 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 366/376 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. **Point for determination**:

- (1) That, on 22-11-2017 in the evening at about 6.30 PM at Village-Maduri-Pathar under Silapathar Police Station, you kidnapped/abducted Smti 'X', a minor girl aged about 16 years, with intent that she might be compelled to marry you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.
- (2) That, on the same day, time and place and thereafter you committed rape on Smti 'X', a minor girl aged about 16 years, and thereby you committed an offence punishable u/s 376 of IPC.

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- (3) That, you on the same day, time and place and thereafter you committed penetrative sexual assault on Smti 'X' 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** Smti 'X' stated that the Complainant is her father. The accused-Lalbabu Rai @ Rajib is her husband. They developed love affairs and got married without the consent of her parents. Hence, her father lodged complaint against the accused and police apprehended him and handed-over her to her parents. However, later on, her parents accepted her marriage with the accused and out of the wedlock, a child was born to them and they are staying peacefully together in the matrimonial house.
- 7. **PW2** Md. Nizam Ali stated that he is the complainant. He knows the accused person. Victim (PW1) is his daughter. Her daughter developed love-affairs with the accused and they got married without their consent. Hence, he lodged complaint against the accused and police recovered his daughter and handed-over her to him. However, later on they accepted her marriage with the accused and out of the wedlock, a child was born to them and they are staying peacefully together in the matrimonial house. Ext.1 is the ejahar. He put his thumb impression in Ext.1.

In cross- examination PW2 stated that he has no objection if the accused is acquitted in this case.

Appreciation of evidence:

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Md. Nizam Ali were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the victim girl had love affairs with the accused and she (victim) got married with him (the accused) without the consent of her parents. So, PW2

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(father of the victim) lodged complaint against the accused and police recovered the victim and handed-over to her parent. Later on, parents of the victim accepted victim's marriage with the accused. As a result of the wedlock, they (victim & accused) were blessed with a child and now they are living together peacefully as husband and wife in the matrimonial home. In cross-examination, PW2, father of the victim, stated that he has no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all. Victim in her evidence stated that her age is 19 years.

- 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 no 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 366/376 of IPC read with Sec.- 4 of the POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Lalbabu Rai** @ **Rajib** not guilty u/s 366/376 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 14th day of December/2018.

(**S) Das)** S**pecial Judge, Dhom**aji.