#### IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

# (G.R. Case 469 of 2019) Kalgachia P.S. Case No 94 of 2019

State of Assam

-versus-

Saha Alom
 Abdul Jalil,
 Resident of Solmari,
 Somer Ali,
 Habibar Rahman,
 Resident of Kukila Pt-II,

Both are of P.S. Abhayapuri,
District – Bongaigaon, ...... Accused.

#### **APPEARANCES:**

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta. For the Accused : Billal Hussain, learned Advocate, Barpeta.

# CHARGE FRAMED UNDER SECTION 365/34 OF THE INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 11.03.2019,

Date of Prosecution evidence : 29.03.2019, 11.04.2019,

Date of Statement of accused : 11.04.2019, Date of Argument : 12.04.2019, Date of Judgment : 12.04.2019.

## <u>JUDGMENT</u>

1. The prosecution case, in brief, is that Kalgachiai P.S. Case No 94/2019 under section 366(A)/34 of the Indian Penal Code, 1860 Read

with added section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Sajiran Begum, the mother of the victim (hereinafter referred to as 'X').

In the aforesaid F.I.R. dated 26.01.2019 (**Exhibit-3**) the informant Sajiran Begum (P.W.3), who is the mother of the victim girl, alleged interalia that on 25.01.2019 at about 3:00 PM, her minor daughter Samina Khatun, aged 15 years, was coming home from school. At that time, with the help of accused Samir Ali, the accused Saha Alom forcibly took away her from the road.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Kalgachia Police Station, the same was registered as Kalgachia P.S. Case No 94 of 2019 under section 366(A)/34 of the Indian Penal Code. Later on, section 4 of the Protection of Children From Sexual Offences Act, 2012 was added as prayed by the I.O. of the case.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused persons Saha Alom and Samir Ali under section 366(A)/34 IPC Read with section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.34/2019, dated 25.02.2019 and both the accused persons were arrested.

- **2.** I have received the case record alongwith the case diary of the case. On production of the accused persons, copy was furnished to them.
- **3.** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed against the both the accused persons u/s 365/34 IPC and separate charge was framed against accused Saha Alom under section 4 of the Protection of Children From Sexual Offences Act, 2012. the charges were read over and explained to the accused persons, to which,

accused pleaded not guilty and claimed to be tried.

**4.** During the course of trial, **05(five)** number of witnesses including the victim, informant & the Medical Officer were examined on behalf of the prosecution to prove the charge u/s 365/34 IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012 against the accused persons.

On completion of prosecution evidence, statement of the above named accused persons was recorded u/s 313 of CrPC. The accused persons denied all the alleged incriminating materials against them. They claimed themselves to be innocent. They denied to adduce evidence in their defence.

- I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as Billal Hussain, learned Defence Counsel for the accused, who are facing trial for commission of offence u/s 365/34 IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether on 25.01.2019 at about 3:00 PM within the jurisdiction of Kalgachia Police Station, the accused persons kidnapped Samina Khatun, aged about 15 years, minor daughter of the informant Shajiran Begum on her way when she was coming from school to her home, in furtherence of common intention and thereby committed an offence punishable u/s 365/34 of the Indian Penal Code?
- (1) Whether on 25.01.2019 at about 3:00 PM the accused Saha Alom kidnapped victim girl within the jurisdiction of Kalgachia Police Station and took her to Goalpara, and committed penetrative sexual assault upon the victim aged about 15 years and thereby committed an offence punishable u/s 4 of the Protection of Children From Sexual Offences Act, 2012 ?

#### DISCUSSION, DECISIONS AND REASONS THEREOF

**7.** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

**PW-1**, **Dr. Anima Boro**, who is the Medical Officer of this case, deposed in her evidence before the court that on 27.01.2019 she working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day in connection with Kalgachia P.S. case No.94/2019, she examined victim Samina Khatun, aged about 15 years, daughter of Sadek Ali of Kalgachia, under Kalgachia P.S., District Barpeta on being identified by WPC- 242 Mamtaz Begum and Kabita Pathak and found as follows:

<u>History</u>:- History of alleged escape with Shah Alam, 24 years/M and Samir on 25.01.2019 aty around 12 noon, went to Goalpara and assaulted sexually by Shah Alam at about 5:00 P.M. History of alleged sexual abuse 3 months before by Shah Alam.

#### **Physical Examination:-**

Identification marks:- One black mole on right side Chest.

Height: - 150 Cm. Weight: - 39Kg.

Chest girth at nipple level:- 74 Cm.

Abdominal girth at navel level :- 64 Cm.

General built & appearance:- Average.

Voice: Feminine.

Teeth: 28.

Hairs: Axillary/Body :- Present.

Breasts:- Developed.

Puberty(as told by the individual):- At 12 years.

Menstruation(as told by the individual):- Regular.

L.M.P.(as told by the individual):- 01.01.19.

Mental condition: - Stable

Gait:- Normal

Intelligence:-Average.

Wearing garments and any suspected stains present:- No stain detected.

Bodily injuries:- No injury detected.

Genital Examination:-

Pubic hairs:- Present.

Vulva(Labia majora & minora):- Normal

Hymen:- Tear

Vagina:- admits 2 fingers.

Cervix and Uterus:- Uterus not palpable per abdominally.

Fourchette and Perineum:-Normal

Vaginal swab collected:-

Result of vaginal swab smear examination:- No Spermatozoa is seen on microscopic examination of vaginal swab slide.

Result of X-Investigation: Plate No. MLC 12 Dated-29.01.19

Wrist Joint :- Epiphyseal union is not completed.

Elbow Joint :- Epiphyseal union completed.

Shoulder Joint & Pelvis:-Epiphyseal union is not completed.

Ultrasonography advised and result: No USG report.

#### **Opinion:-**

- (1) There is no recent sign of sexual intercourse, but the victim is accustomed to sexual intercourse.
- (2) There is no injury on her private parts.
- (3) the victim is not suffering from any physical/mental illness.
- (5) There is no foreign body in her clothe as well as in her body.
- (6) At present, victim's age is above 14 years and below 16 years.

PW1 exhibited the medical report vide **Ext.1** wherein **Ext.1(1)** is her signature.

Her cross-examination is declined by the defence side.

**PW-2, Miss Samina Khatun**, is the victim of this case. She deposed that incident occurred on 25.01.2019. She went with accused persons, to Goalpara, for traveling purpose and on while coming back, police of Goalpara caught all of them and were taken to Goalpara Police Station. Then police of Kalgachia Police Station brought them to Kalgachia

PS. She also state that her mother lodged case against the accused persons. PW2 further stated that police sent her for medical examination and also for recording her statement u/s 164 CrPC by the learned Magistrate. PW2 exhibited her statement as **Ext.2** wherein **Ext.2(1) & 2(2)** are her signature. She also stated that persons did not do any bad work with her.

**During cross examination**, PW2 has stated that she knew the accused persons prior to the incident. She went with the accused persons voluntarily and they did not do any bad works with her.

**PW3-Sajiron Begum,** who is the informant of this case, deposed that the victim happen to be her daughter and she knows the accused Saha Alom. Incident took place before 2/3 months. Victim went to school on the date of occurrence, but did not return. She searched for her but did not find her. In the evening, at about 7:00 PM the victim was found at Goalpara and then her husband brought her back and she lodged the case. She also stated that accused Saha Alom used to visit their house prior to the incident and the victim did not complaint anything against the accused persons. She further stated that the victim told her that she went for traveling. She exhibited the FIR vide Ext.3 wherein Ext.3(1) is her signature.

**During cross examination**, she stated that she lodged the case on suspicion.

**PW4- Sadeque Ali,** who is the father of the victim, deposed that he knows accused Saha Alom. Incident took place before 2/3 months. Victim went to school on the date of occurrence, but did not return. He searched for her but did not find her. In the evening, at about 7:00 PM the victim was found at Goalpara and then he and other people brought her back. He also stated that Saha Alom used to visit their house prior to the incident and the victim told him that she went for traveling.

Defence side declined to cross examine PW4.

PW5- Baser Ali deposed that the victim is his niece. He

knows accused Saha Alom. Incident took place on 25.01.2019. He was at home. In the evening, at about 7:00 PM he came to know that the victim was found at Goalpara Police Station and then he and elder brother brought the victim. His sister-in-law lodged the case. He also stated that the victim told him that she went for traveling and she did not complain anything against the accused.

Defence side declined to cross examine PW5.

- **8.** From the evidence of the prime witness i.e. the victim of the case, it is seen that she knew the prime accused Saha Alam prior to the incident. She clearly stated in her evidence that the said accused used to visit her house prior to the incident. The accused persons are charged u/s 365/34 IPC r/w section 4 of POCSO Act.
- **9.** Section 365 IPC demands that the accused must kidnap a person by inducing her to go with them or for keeping that person secretly and wrongfully confined.
- 10. However, there is no iota of evidence that accused kidnapped the victim girl for secretly and wrongfully confined her. Rather, the victim in her evidence-in-chief clearly stated that she voluntarily went with the accused persons, to Goalpara, for traveling in their bike and they were caught by police of Goalpara.
- **11.** Moreover, the victim has further deposed that the accused persons did not do any bad work or sexual activities with her, during her stay, with them.
- 12. No wonder, for this reason, the M.O. (PW1) has not found any sign of sexual intercourse or injury on her private part. The victim even disclosed the same thing to her parents PW3 & PW4. The parents of the victim stated that she went with the accused persons for traveling and that they did not do any bad work with her.

- **13.** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has not be proved against the accused beyond reasonable doubt.
- 14. On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused persons kidnapped the victim or committed penetrative sexual assault on the victim. Hence, accused persons are entitled to acquittal under the benefit of doubt, which I accordingly do.
- **15.** In the result, accused **Saha Alom & Somer Ali** are **acquitted** of the charge under section 365/34 IPC read with section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against them, on benefit of doubt.
- **16.** Given under my hand and seal of this Court on this 12th day of April, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta Sd/-Special Judge, Barpeta.

Typed by me

(Kavery Das, Stenographer)

### A P P E N D I X

### (A) **Prosecution witnesses**:

P.W.1 = Dr. Anima Boro, the M.O., P.W.2 = Samina Khatun, the victim, P.W.3 = Sajiron Begum, the informant,

P.W.4 = Sadek Ali, P.W.5 = Baser Ali,

#### (B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) & 1(2) = Signature of Dr. Anima Boro,

Ext.2 = Statement of the victim u/s 164 CrPC,

Ext.2(1) & 2(2) = Signature of victim,

Ext.3 = Ejahar,

Ext.3(1) = Signature of Sajiron Begum

- (C) **<u>Defence witnesses</u>**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.