IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

Spl. (POCSO) Case No. 23/2019

u/s 363 IPC read with Sec. 4 of POCSO Act,2012

State of Assam

-vs-

Sri Ruben Nayak

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

Committed by:

Learned SDJM(M), Biswanath Chariali

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence : Mr. R. K. Sarmah, learned Advocate

Dates of recording Evidence: 25.06.2019, 09.07.2019.

Date of Argument

: 09.07.2019.

Date of Judgment

: 09.07.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 14.05.2019 the informant namely, Sri Bijoy Panika lodged an FIR with the OC, Sootea PS stating inter alia that his 12-year-old daughter (name is withheld) had been missing from his house since to 2 PM of 12.05.2019. He stated that they had searched for the girl but failed to trace her out.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused u/s 363/343 IPC r/w Section 4 of the POCSO Act.
- 3. The accused in due course appeared before this court to face trial. Copies of the relevant documents were furnished to him and upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed offences u/s 363 IPC r/w Section 4 of the POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, he pleaded not guilty.

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4. The accused faced trial from custody. The prosecution during evidence examined the informant –the father of the victim as PW 1, her mother as PW 2 and the alleged victim as PW 3. Looking into the evidence of these three vital witnesses, more particularly, the evidence of PW 3, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note and the evidence on record, the prosecution evidence was closed. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

Points for determination

- i) Whether the accused on the day of the alleged occurrence kidnapped the said victim, who is a minor under the age of 18 years from the lawful guardianship of her father, Sri Sri Bijoy Panika?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

<u>Discussion, Decision and Reasons thereof</u>

- 5. PW 1 is the informant and the father of the alleged victim, Sri Bijoy Panika. He stated that at that relevant time his daughter went missing, who was then 14 years old. He did not find in his house after returning from his work place for which he lodged the FIR. The police later traced her location from her mobile phone. She was thereafter found in the house of her maternal uncle. He then took her to the police station. She told him that a boy had taken her with him, whose name he could not say. According to him, the boy had taken her from Nagsankar and he kept her for 2 days.
- 6. PW 2 is the mother of the alleged victim, Smti Nandeswari Panika stated that her daughter had gone missing from their house when she had gone for washing clothes to the river bank. As they could not trace her out for 4 days, her husband lodged the FIR. She was traced on her mobile phone by police in Gingia. However, she was later informed by her elder brother, Nandalal Bhuyan that the victim had gone to their house. She soon along with others went to her elder brother's house and brought her back. She stated that the victim had told her that she had gone with a boy on her own wish.
- 7. PW 3- the victim stated that she got introduced with the accused from a phone call, which was a wrong number and in that manner both of them started to speak with one another. Later the accused, expressed his love for her and she then reciprocated. The accused asked her over phone whether she would go with him and she readily agreed. She went to Nagsankar and met the accused and there from she on her own wish went with the accused to his house situated at Kalahandi Line in Gingia Tea Estate. There she stayed with him for 2 days and thereafter came to her maternal uncle's house. Her maternal uncle

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- informed about her presence in their house to her mother over phone. She stated that the accused did not misbehave her within the said period. Her statement was recorded u/s 164 CrPC which she proved that as Ext. 1.
- 8. Thus from the evidence of all these vital witnesses, more particularly, from the evidence of PW 3, we do not find any evidence against the accused to convict him on the offences charged against him. The prosecution has failed to its case. As such I acquit the accused person from the offences charged against him and set him at liberty forthwith. The Jail Authority be informed for his immediate release, if he is not required in any other case. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 9th day of July, 2019.

(D. BORA)

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Bijoy Panika

PW2- Smti Nandeswari Panika

PW3- Victim

Exhibits proved by the prosecution witnesses:

Ext.1- Statement of the victim u/s 164 CrPC

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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