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

SONITPUR, ASSAM

Spl. POCSO Case No. 01/2016 u/s 366-A IPC r/w Sec 11 (v)/12 of POCSO Act, 2012

State of Assam

-VS-

Sri Chiranjit Chanda

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P. For the defence : Mr. P.P. Borah, learned Advocate.

Dates of recording Evidence: 23.02.2018, 21.04.2018, 04.07.2018.

Date of Argument

: 04.07.2018.

Date of Judgment

: 04.07.2018.

JUDGMENT

- 1. The prosecution case in brief is that on 06.10.2015 the informant, Smti Sabitri Sonar lodged an FIR with the O/C, Biswanath Chariali PS, addressing the same to the S.P., Biswanath Police District stating inter alia that on 30.05.2015 her 17 and ½ year old daughter (name is withheld) who is a student of Greenbird School, Biswanath Chariali was forcibly married by the accused through a marriage agreement and kept her a place under Barbaru P.S. in Dibrugarh District as his wife and tried to damage her chastity. The victim then called the informant over phone and stealthily came to her house and restarted her education in her school. She alleged that the accused had been threatening the victim on her mobile phone to abduct her again and keep her as his wife.
- 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 366 IPC, r/w Section 4 of POCSO Act.
- 3. In due course, the accused appeared before this Court to face trial. The copies of the relevant documents were furnished to him. Upon hearing both the sides on the point of charge and taking note of the materials furnished u/s 173 CrPC as my learned

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predecessor found grounds for presuming that the accused had committed offences u/s 366(A) IPC, r/w Section 11(v)/12 of POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.

4. During trial, the prosecution examined five witnesses in all including the informant and the alleged victim. Looking into the evidence as adduced by all these witnesses, the prosecution contended that further evidence would not strengthen its case. Looking into the materials on record, the prosecution evidence was closed. The accused was thereafter examined 313 CrPC. His plea was total denial. He refused to adduce any evidence on his behalf. The case was thereafter, argued by both the sides.

Points for determination

- i) Whether the accused on the day of the alleged occurrence abducted the said victim who is under the age of 18 years with intent that she may be forced to illicit intercourse with another person?
- ii) Whether the accused threatened the victim of publishing her photos in the facebook or any form of media of her involvement in sexual act?

Discussion, Decision and Reasons thereof

5. As we go through the FIR, which is proved by the PW 1- informant, Sabitri Sonar as Ext. 1, we notice that the informant has not alleged anything suggesting that the victim- her daughter was forcibly abducted by the accused. PW1 in her evidence stated that about 5-6 years back when the victim was returning from her school the accused took her from the road. She had heard about the said incident. According to her, her daughter was minor at that relevant time. When she told the accused that she would lodge a case with the police, the accused threatened to kill her daughter. She testified that the accused brought the victim back to her house after about 5 days along with a 'Naga Boy' and took her back again with him. Then the accused kept her daughter 14-15 days therefrom. Thereafter, the victim herself returned back. According to her, the victim did not flee from the custody of the accused but she had come on her own. Her daughter told her that she would again study and therefore, she was admitted to Pinewood School. The victim was kept in a hostel. At that relevant time, the accused had publicised badly against her in the facebook. She stated that she had lodged the FIR at the time when the accused abducted her daughter. She proved her FIR as Ext. 1. In her cross-examination she stated the accused took her daughter from Arunachal Pradesh. She further stated that at the time of staying together, both the accused and the victim used to come to their house. She stated that she did not lodge any case in the



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Arunachal Pradesh. She further stated that she could not say as to what the accused had written in facebook against her daughter. She further stated that at the time of the said occurrence her daughter was 14 years old. From the evidence of PW 1, we find that in the FIR lodged by her, she stated that her daughter was 17 and ½ years old, whereas, in her evidence she contradicted Ext. 1. and stated that the victim was 14 years at the time of the alleged occurrence. From her evidence, it has also come out that both the accused and the victim used to come to her house after the alleged abduction, which has not been alleged in the FIR and her testimony as PW1 and finally, the victim came on her own without being restrained by the accused. PW 1 has no knowledge as to what has been written in the facebook why the accused against her daughter. The evidence of PW1 therefore clearly shows that the accused did not abduct her daughter and there was cordial relationship between the family of the victim and the accused even after the alleged incident of taking away of the victim by the accused.

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6. PW 2, the victim stated that she was 14 years of age when the accused took her along with him on the day of 'Saraswati Puja' on 15.02.2013. Her evidence too does not disclose that she was taken by the accused forcibly with him. She stated that the accused took her to a house but she could not say where the house was situated. According to her, in that house, she could see other women folk. There she was asked by the accused to put her signature on a blank paper. On the next day, she was taken to a Court at Dibrugarh, where advocates were present and there she put her signature on one 'Court Paper' and there she insisted the accused to go to her house at Khunsa. The accused took her to her house along with 15-16 'tribal boys'. She stated that she wanted to stay in her house but the accused did not allow and took her back along with him. Thereafter, she stayed with the accused for about 15 days and during that period he established physical relationship with her. She then became pregnant but the accused took her to Tinisukia Medical and aborted her pregnancy. Then the accused brought her to her parents' house at Khunsa, Arunachal Pradesh and left her there. There she took admission in school and thereafter her mother lodged FIR against the accused. She proved her statement recorded u/s 164 CrPC as Ext. 2. She stated that the accused wrote badly against her in the Facebook.

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7. From the evidence of the informant-PW 1 and the victim-PW 2, it appears that the victim went with the accused on her own wish and after staying with him for a day she returned back to her parents' house only to go back with him for staying for about 15 days. Finally she returned back to her parents' house after which the informant lodged the Ext. 1. From the evidence of PW 2 it is seen that no force was used by the accused for her abduction. The Ext. 1 as referred to above discloses that the victim was $17 \ \frac{1}{2}$ years old at that relevant time. The Radiological Report of the victim as his available

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with the case record shows that she was 19 years old on the day of her medical examination on 04.09.2016. The incident allegedly took place in the year 2015. The doctor examining her neither found neither any injury on her body nor any sign of recent sexual intercourse on her.

- 8. Thus from the evidence on record, we can be safely conclude that the victim is not a child under the age of 18 years. PW 3 Maya Devi Biswakarma stated that the victim was forcibly taken by the accused with him when she was on her way to school. She however stated in her cross that she has no idea as to when the said incident took place as she was at Biswanath Chariali at that relevant time. PW 4 Haliam Biswakarma also stated that the accused had kidnapped the victim in the year 2013 and did 'kharap kam' with her. He also stated that he was at Biswanath Chariali at that relevant time. PW 5 Hari Biswakarma is also a hearsay witness. He could know about the incident after 10-15 days of the alleged incident. Evidence of PW 1 and PW 2 as noticed above do not disclose that the accused had forcibly taken the victim with him. The returning of the victim to her parents' house and thereafter again going back with the accused with him without any resistance shows that the victim had consent in going with the accused. Further we noticed above that the victim is a major girl, who is not under the age of 18 years. There is nothing on record to show that the accused had published anything in the facebook against the victim or that he threatened to do so. Under such circumstances I find that the prosecution has failed to prove its case. As such, I acquit the accused person from the offences charged against him and set him at liberty forthwith. The bail bond of the accused is extended for a period of six months as prayed for u/s 437-A CrPC. The case disposed of.
- 9. 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 4th day of July, 2018.

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

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ANNEXURE

Witnesses examined by the Prosecution:

PW1- Smti Sabitri Sonar

PW2- Victim

PW3- Smti Maya Devi Biswakrama

PW4- Sri Haliam Biswakarma

PW5- Sri Hari Biswakarma

Exhibits proved by the prosecution witnesses:

Exhibit-1: FIR.

Exhibit-2: Statement of the victim u/s 164 CrPC

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

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