## IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- 60 OF 2017

(Under Section **4** of the POCSO Act, r/w Section **363** of IPC, arising out of GR Case No 3949 of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Md Jahiruddin Ali

S/o Md Mustafa Ali,

Vill- Kampur, Kachua(Nagaon)

P.S. – Kachua, Dist- Nagaon, Assam

Date of framing charge :- 03-01-2018.

Date of Recording Evidence :- 15-02-2018.

Date of examination of accused u/s:- 15-02-2018.

313 of Cr.P.C.

Date of Argument :- 15-02-2018.

Date of Judgment :- **15-02-2018.** 

Counsel of the Prosecution :- Mr Munindra Ch Baruah,

Special Public Proecutor,

Sonitpur, Tezpur.

Counsel for Accused :- Mr AK Saikia, Advocate.

#### JUDGMENT

- 1. In this case accused Md Jahiruddin Ali is put for trial for the allegation of charge under Section 4 of the POCSO Act, r/w Section 363 of IPC.
- 2. The factual matrix according to the FIR in brief is that on 17-10-2017, accused persons kidnapped informant's 16 years minor daughter. On being vigorous

searched, the informant came to know that it is the accused who kidnapped informant's minor daughter and kept her at Panigaon, Nagaon. Accordingly, they were recovered at Panigaon, Nagaon. Hence, this prosecution case.

- 3. The ejahar was filed by the informant Sri Puna Kanta Nath before the OC, Sootea Police Station on 18-10-2017.
- 4. On receipt of the ejahar, O/C, Sootea Police Station registered the case vide Sootea Police Station Case No 144/17 under Section 365 of the IPC, r/w Section 4 of POCSO Act. After completion of investigation, O/C, Sootea Police Station sent up the case against the accused person under Section 4 of POCSO Act, r/w Section 363 of IPC.
- 5. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 4 of POCSO Act, r/w Section 363 of the IPC. Particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution examined as many as five PWs including the informant and vicatim. After examination of the witnesses, learned Counsel for the accused submitted to close the prosecution evidence on the ground that neither the complainant nor the victim reveals any material as to alleged offence against the accused and therefore, it would be futile to examine the other witnesses. Learned Special PP also conceded.
- 7. On perusal of the statement of witnesses including the complainant and victim, I think that prosecution case would not develop, even if examine the other prosecution witnesses, as they were no way supported the prosecution case. Even if examine the other witnesses, prosecution case would not develop. Speedy trial is the right of the accused person. Considering this all, prosecution evidence is closed.
- 8. Accused is examined under Section 313 CrPC and the evidence appears against the accused persons and the allegations made against the accused person are put before me for his explanation where they denied the allegations and

declined to give defence evidence.

- 9. I have also heard argument put forward by the learned Counsel for both the sides.
- 10. The point for decision in this case is that
  - (1) "Whether the accused, two months prior to 17-10-2017 at Jaypur Majgaon, under Sootea PS, kidnapped Miss "X" (16 years) from lawful guardianship of her father complainant Puna Kanta Nath and thereby committed an offence punishable under Section 363 of the IPC?
  - (2) Whether the accused two months prior to 17-10-2017 (during that period) at Nagaon, Panigaon, Dist-Nagaon, in the rented house, committed penetrative sexual assault to Smti "X" aged about 16 years minor girl and thereby committed an offence punishable under Section 4 of POCSO Act?

### Reasons, Decisions and reason for decision:

- 11. To arrive at the judicial decision, let me appreciate the evidences on record.
- Jaharuddin. The incident took place about three months ago. Victim Jonali Devi is his daughter. At the time of incident, she was just less than 14 years. Accused telephoned to his daughter, thereafter, his girl(victim) was missing from their house. They vigorously searched our daughter, but, did not found her. Then, he informed the matter to the police station. One day, his daughter rang to him and informed him that she was confined by the accused at Panigaon, Nagaon. Then he immediately went to Panigaon, Nagaon and recovered his daughter from the possession of the accused as accused confined his daughter. Along with his daughter, he also took the accused and handed over them to the police station. Thereafter, he filed the ejahar against the accused. Police sent his daughter for medical examination and also forwarded her before the learned Magistrate for recording her statement under Section 164 of CrPC. Thereafter, he has taken the custody of his daughter. Ext. 1 is the ejahar and Ext. 1(1) is his signature. The ejahar was written by one scribe

according to his direction. After writing the ejahar, the scribe has read over the contents of the ejahar and on satisfaction, he put his signature thereon. He has also submitted one School Certificate of his daughter at the police Station.

In cross-examination, he stated that accused and victim introduced each other after a talk in mobile. Victim also ring to accused and accused also ring to her before her missing. He cannot exactly recall the date of birth of my victim daughter. He has informed before the I/C Itakhola Police Out Post after three days of her missing. After recovery of his daughter and accused he has filed the written ejahar. Accused and my daughter lived together for about 45 days at Kalimandir area of Panigaon, Nagaon. He has heard from his neighbor such as Bipul Nath that during his absence and also in the absence of his wife accused along with his daughter used to visit our house in one time. Before recovery of his daughter, he has gifted one Ceiling Fan and some wearing clothes including mekhela-sadar made of patsilk and cotton. He came to know that the accused belongs to Muslim community only on when he meet accused and his daughter at Panigaon, Nagaon. On being come to know by our villagers that his daughter eloped with a person belongs Muslim Community, then the villagers ostracized me. On being disseminate the name and photo of the accused with his victim daughter at facebook, villagers came to know about the incident, and then villagers ostracized him. The incident took place not only for fault of the accused, it was happened for the fault of his daughter also.

13. **PW2-** Smti Bharati Devi, the mother of the victim stated that prior to the incident, she does not know accused, but, she knows accused when her daughter was recovered from his possession. The incident took place about 3/4 months ago. At the time of incident, she was just less than 15/16 years old. Her victim daughter used mobile phone. She quite often ring to some person. The accused took hid daughter when we were in Arunachal. But, she cannot say from where her daughter was taken by the accused. We searched the her victim daughter, but, did not find her. They informed the matter to the police station. Her daughter rang to her elder sister stating that she is at Panigaon, Nagaon along with the accused. Then, they went to a rented house at Panigaon, Nagaon where we recovered her daughter from the possession of accused. Then, they took her victim daughter and accused and handed over them to the police station. Thereafter, her husband lodged the ejahar. her girl was also examined medically and her statement was also recorded through the learned Magistrate. Thereafter, she was given custody

to them. She is still at their house.

In cross-examination she stated that she has not seen personally when her daughter went out or with whom she went out. She does not know the exact date of birth of her daughter.

14. **PW3-** Sri Lakhidhar Nath stated that at the time of incident, the victim girl was 15/16 years old. Complainant and his wife recovered the girl from Panigaon, Nagaon. The girl was missing from the house of complainant. Thereafter, the complainant, his wife along with others searched the victim girl. At last they recovered the girl and boy (accused) from Panigaon, Nagaon and handed over them to the police station.

In cross-examination he stated that he does not know about the incident. He does not know to whom victim was eloped. As the villagers ostracized complainant, therefore, the complainant filed this case against the accused.

15. **PW4** – Smti Bobita Devi deposed that the victim is her own younger sister. Her name is Jonali Devi. At the relevant time she was about 16 years of age. Her sister was missing from her house. Therefore, they have been searched her vigorously and informed the matter to the police station. After about 45 days, Jonali ring to her that she eloped with a boy who is belongs to Muslim Community and therefore, asked me to report this matter to her father so that she can be rescued. Thereafter, her father and mother recovered victim along with the accused from a house of Panigaon, Nagaon. Thereafter, they have been handed over to police Station. Police sent the victim for medical examination and thereafter sent her before the Court for recording her stated and then she was given custody to her father.

In her cross-examination, she stated that she does not know how her victim sister was missing from her house. But, they heard from the villagers of Choibari Centre that her sister was went with a boy in a public bus from Choibari Centre. The age of her sister as stated above as 16 years stating on guess. As the boy belongs to Muslim Community, so, her father filed this case. Had he been Hindu fellow, her father did not have filed this case.

16. **PW5** – the victim Miss "X" stated that he knows the accused. The incident took place about four months ago. Accused is also known as Riku. She introduced with the accused over mobile phone. Thereafter for last one month they

have a regular talk with each other. One day, accused called her to Itakhola. Accordingly, she went to Itakhola. Thereafter, accused took her forcibly in a bus to Nagaon and kept her at his mother's house at Kanpur, Kachua. When she noticed the forehead of the mother of the accused without vermilion, she suspected about the religion of the accused. Accused kept her there for 15 days. During that period she was taken in a train, Tomtom(battery car). Thereafter, she was kept at a rented house at Panigaon, Nagaon. One day with the mobile hand set of accused, she informed the matter to her sister. Accordingly, on being came to know by her parents, she was recovered along with the accused. She clearly stated that during that time, she has not been cohabited with the accused.

In cross-examination, she admitted that after introducing with the accused over phone, they develop love affairs with each other. Therefore, she at her own will called accused to take her to Chaibari. She has also gone the accused at her own will which she stated before the learned Magistrate while her statement was recorded under Section 164 CrPC. She further stated that accused never forcefully took her. Due to some mistake, the said incident took place. She further stated that while their marriage was performed, she was 19 years old. During the period of 45 days, when she resides with the accused, once, she took accused to her house to introduce him to her mother. She even admitted that she made statement before the police that inspite of knowing that accused belongs to Muslim Community, she being eloped with the accused. She further added that she has no any objection if the accused is enlarged on acquittal.

- 15. These much is the prosecution evidence.
- 16. The accused is charged under Section 363 of the IPC, r/w Section 4 of POCSO Act. To prove the charge under Section **363** of IPC, prosecution must prove that
  - "(i) the person in question was at the time of the offence in India;
  - (ii) the accused conveyed that person beyond the limits of India;
  - (iii) he did so without the consent of that person, or of some person legally authorized to consent on that person's behalf."
- 17. From the statement of victim and other witnesses, it appears that

none of the ingredients is fulfill by any witnesses. The victim by giving good bye to the prosecution case stated that accused never forcefully took her. Due to some mistake, the said incident took place and as such she does not have any objection, if, he is enlarged on acquittal. Therefore, allegation of charge under Section 363 of IPC is failed.

18. Next, come to prove charge under Section 4 of POCSO Act, prosecution must prove –

# **Penetrative Sexual Assault**: A person is said to commit "**Penetrative sexual Assault**" if –

- "a) he penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a child or makes the child to do so with him or any other person;
- b) h e inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body or the child or makes the child to do so with him or any other person; or
- d) he applies his mouth to the penis, vagina, anus, urethra or the child to do so to such person or any other person".
- 19. In this type of cases, the evidence of victim is much more important. Here in this case, **PW5**-the victim, Miss "X" no way supports the prosecution case. She introduced with the accused over mobile phone. Thereafter for last one month they have a regular talk with each other. In cross-examination, she admitted that after introducing with the accused over phone, they develop love affairs with each other. Therefore, she at her own will called accused to take her to Choibari. She has also gone the accused at her own will which she stated before the learned Magistrate while her statement was recorded under Section 164 CrPC. She further stated that accused never forcefully took her. Due to some mistake, the said incident took place. She further stated in her cross-examination that she has no any objection if the accused is enlarged on acquittal. Therefore, the victim no way supports the prosecution case. Similarly, the complainant and the mother of the victim have not supported the prosecution case. **PW1**-the complainant stated that the accused and victim introduced each other after a talk in mobile. Victim also ring to accused and accused also ring to her before her missing. On being come to know by our villagers

that his daughter eloped with a person belongs Muslim Community, then the villagers ostracized me. He also admitted in his cross-examination that the incident took place not only for fault of the accused, it was happened for the fault of his daughter also. **PW2**- the mother of the victim also stated also stated nothing implicating the accused in the alleged offence. Similarly, other two PWs i.e. PW3 & 4 have not supported the prosecution case to be involved the accused in the alleged offence. Therefore, none of the ingredient of the alleged charged is proved by prosecution. Hence, charge under Section 4 of POCSO Act is failed.

- 20. On careful perusal of the whole case record, it appears that prosecution has categorically failed to prove any of the alleged charges against the accused. Hence, I do not have any hesitation to acquit the accused. Accordingly, accused **Md Jahiruddin Ali** is acquitted and set them at liberty forthwith.
- 21. The liability of the bailor is hereby discharged.
- 22. Send back the LCR.

Given under my Hand and Seal of this Court on this the 15<sup>th</sup> day of February, 2018.

(A. K. Borah) Special Judge, Sonitpur,Tezpur.

Dictated and corrected by me.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

### **APPENDIX**

# Witnesses examined by the prosecution:

1.PW1 - Sri Puna Kanta Nath, Complainant,

2.PW2 - Smti Bharati Devi,

3.PW3 - Sri Lakhidhar Nath,

4.PW4 - Smti Bobita Devi &

3.PW5 - Miss "X" (victim).

### Documents exhibited by the prosecution:

1. Ext. 1: The ejahar.

(A. K. Borah) Special Judge, Sonitpur, Tezpur.