#### IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

### Sessions Special (POCSO) Case No. 04/2015 (u/s 366/376 IPC r/w Section 4/6 of the POCSO Act)

Present : Mr. P. Das Special Judge, Morigaon, Assam.

State of Assam

-VS-

Sh. Hemanta Basumatary ..... Accused

Date of Charge : 01.10.2015.

Date of Argument : 13.09.2019.

Date of Judgment : 11.10.2019.

#### **Appearance for the Parties:**

Advocate for the State : Mr. A. Kalam, learned public prosecutor.

Advocate for the Accused : Mr. P. R. Bora, Ld. Advocate.

Mr. T. Boro, Ld. Advocate.

### **JUDGMENT**

- 1. The prosecution case in brief is that an ejahar dated 08.05.2014, was lodged before the Jagiroad Police Station by one Raju Konwar alleging inter-alia that the accused Sh. Hemanta Basumatary kidnapped the minor daughter of the informant from near a Bihu function at Belguri village and kept her concealed at his house. On the basis of the ejahar, Jagiroad PS Case No. 179/2014, was registered under Section 366(A) IPC and investigation started.
- **2.** After completion of investigation, charge sheet was submitted against the accused, Sh. Hemanta Basumatary u/s 366(A) IPC. Subsequently, vide order dated 01.10.2015, charges were framed against the accused u/s 366(A)/376 IPC r/w Section 4/6 of the POCSO Act, 2012, by this Court. The charges upon being read over and explained to the accused, were denied by him, leading to commencement of the trial.

**3.** At the trial, prosecution side adduced evidence of four witnesses including the informant. The prosecutrix was summoned as Court Witness and examined as CW-1 and thereafter cross-examined by the defence. After completion of prosecution evidence, the accused was duly examined u/s 313 Cr.PC. The defence did not adduce any evidence.

#### 4. <u>POINTS FOR DETERMINATION</u>

- (i) Whether, the accused Sh. Hemanta Basumatary is guilty of committing an offence punishable u/s 366(A)/376 IPC ?
- (ii) Whether, the accused Sh. Hemanta Basumatary committed penetrative sexual assault upon the prosecutrix, aged about 16 years, and thereby, quilty of committing an offence punishable u/s 4/6 of the POCSO Act?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

- I have carefully perused the ejahar, the charge sheet, evidence adduced during trial, exhibits and other relevant materials on record. I have heard learned Public Prosecutor appearing for the State and Mr. P. R. Bora assisted by Mr. T. Boro, learned defence counsel for the accused and considered the submissions of the respective learned counsels.
- **6.** PW-1 Julee Konwar, stated in her deposition that the informant is her uncle and the victim/prosecutrix is her cousin sister. She stated that on the day of the incident at about 10 PM in the night, the prosecutrix along with her friend Pallabi had gone to Belguri to enjoy a Bihu function, but did not return back and that on the next morning at about 6-7 AM, the accused made a call on her phone and informed her that he had taken away the prosecutrix. This witness further stated that thereupon she informed about it to the family members, who went to the house of the accused and filed the instant case. She further stated that after lodging of the ejahar, the prosecutrix was recovered by the police from the house of the accused. This witness further stated that at the time of the incident the prosecutrix was aged about 14 years and studying in class IX. This witness further stated that after the incident she met the prosecutrix but not enquired about the matter from her.

- 7. PW-2 Renuka Konwar, stated in her deposition that the informant was her husband and the prosecutrix was her daughter and that she knew the accused. She stated in her deposition that on the day of the incident at about 10 PM in the night, the prosecutrix had gone to Belguri to enjoy a Bihu function and that at the time of the incident, she was aged 14 years and studying in class IX. This witness further stated that she went to the Bihu function in a group of girls but did not return home whereupon they thought that she had stated in her friend's house. This witness further stated that on the next day at about 7 AM in the morning, PW-1 received a phone call from someone who informed the that he had taken away the prosecutrix and that thereafter on finding the address of the person, her husband along with his uncle and other relatives went to the house of the accused, but the accused hide the victim and informed them that she was not there, whereupon her husband returned back home. This witness further stated that in the afternoon she along with PW-1 went to the house of the accused but did not find him but there they met the father of the accused and the father of the accused assured them that he will send the girl by 6-7 PM in the evening on the day. This witness further stated that when however the girl had not returned, her husband filed the instant case, whereafter the police recovered the prosecutrix from the house of the accused. This witness further stated that after her recovery, when she questioned the prosecutrix regarding the incident she told her that she was in love with the accused and that the accused had forcibly taken her to his house. In cross-examination, this witness reiterated that she had stated before the police that the prosecutrix told her that the accused had forcibly taken her from the Bihu field.
- **8.** PW-3 Raju Konwar stated in his deposition that he is the informant of the case and that the prosecutrix was his daughter and that he knew the accused. He further stated that the incident had taken place in the year 2015 and that at that time, the prosecutrix was aged 15 16 years and she was studying in class IX. He further stated in his evidence that at the time one Bihu function was being organised at Belguri village and the prosecutrix went there along with some other village girls but did not return back at night. He further stated that around 7:30 AM on the next morning he received the phone call from the accused who told him that the prosecutrix had stayed in his house, whereupon this witness along with some other villagers went there and found his daughter. This witness further stated that

the family members of the accused assured them to hand over the girl and asked them to come back again in the evening at 5-6 PM. That, however when the girl did not return he went to the Jagiroad police station and lodged the instant case. He proved his ejahar as Exhibit 1 and his signature thereon as Exhibit 1 (1). In cross-examination by the learned defence, he stated that he saw the prosecutrix in the house of the accused but could not talk to her and denied that at the time of the incident, his daughter was aged more than 18 years.

- PW-4 Pallavi Paul stated in her deposition that she knew the prosecutrix and that on the day of the incident she along with the prosecutrix had gone to enjoy a Bihu function and that while they were enjoying the Bihu function, suddenly the prosecutrix disappeared without informing her. This witness further stated that subsequently accompanied by some villagers, she went to the house of the victim, where her parents asked her about the whereabouts of the prosecutrix. This witness further stated that on that night she stayed in the house of the victim and on the following day she returned back to her home and that since then she had not met the prosecutrix. She further stated that at the time of the incident the prosecutrix was a student of class IX. The learned defence declined to cross examine this witness.
- 10. CW-1 is the prosecutrix. She stated in her deposition that the informant is her father and that she knew the accused person who is a resident of their village. She further stated in her deposition that the incident occurred when she was studying in class IX and at that time she was aged 15 years. She further stated that on the date of the occurrence, at night she along with another friend went to see Bihu function which was going on in their village and in the function she met the accused who had called her up. She further stated in her deposition that thereafter the accused took her to his house and kept her in his house with him and on the next day, her parents went to his house and brought her to their house, whereafter her father lodged the instant case. In cross-examination by the learned defence, the prosecutrix stated that she had gone to the house of the accused as friend and stayed there as a friend. She further stated that nothing untoward incident took place in the house of the accused and that the accused did not commit any illegal act with her.

- 11. The testimony of PW-1 that on next morning the accused Hemanta Basumatary telephoned and informed her that he has taken the prosecutrix with him would be in the nature of extra judicial confession regarding the said taking away. Further, PW-2 has also corroborated the same by stating that PW-1 had received said phone call from the person who was later found to be the accused. PW-3 –the informant and father of the prosecutrix has also given testimony that on the next morning he received a phone call from the accused stating that the prosecutrix is staying in his house.
- **12.** However, the aforesaid testimony of PW-1 and PW-2 does not indicate as to whether the prosecutrix was forcefully taken away by the accused. PW-1 and PW-2 have stated that the prosecutrix was recovered by police from the house of the accused. PW-3 has also stated about finding the prosecutrix in the house of the accused.
- **13.** Therefore, on the basis of the testimony of PW-1, PW-2 and PW-3, it is clear that on the day of the incident, the prosecutrix had gone with the accused or was taken by him and that she was found at his house subsequently.
- **14.** On the day of the incident, the prosecutrix had supposedly gone to the Belguri village to enjoy Bihu function with Pallavi Paul who has adduced evidence as PW-4. However, PW-4 apart from stating that the prosecutrix disappeared from the Bihu function without informing her has not thrown any more light regarding the incident and has also not implicated the accused in any way.
- **15.** Having analyzed the evidence of PW-1 to PW-4, I would now analyze the testimony of the prosecutrix who has been examined as CW-1. In her testimony, the prosecutrix stated about meeting the accused in the Bihu function and the accused taking her to his house, keeping her there and on the next morning her parents bringing her back. The parents of the prosecutrix as PW-2 and PW-3 have not stated about bringing back the prosecutrix themselves from the house of the accused. The prosecutrix has clearly stated in her cross-examination that she went to the house of the accused as friend; stayed there as friend; that no untoward incident took place in his house and that the accused did not commit any illegal act upon her.

- **16.** Thus, the prosecutrix in her evidence has not implicated the accused and has rather exonerated him. Though she has stated her age to be 15 years at the time of the incident, the aforesaid non-implication and exoneration of the accused by her in her testimony as a whole does not indicate any enticement or forcefully taking away of her by the accused.
- **17.** The limited implication of the accused in the testimony of PW-1, PW-2 and PW-3 is contradictory to the clear non-implication in the testimony of the prosecutrix and her exoneration of him, thereby, casting doubt on the veracity of the prosecution case. It may be mentioned herein that the crucial testimony of PW-4 who was with the prosecutrix in the Bihu function also does not implicate the accused. In this context, the statement of the PW-2, mother of the prosecutrix in her evidence about the prosecutrix telling her that the prosecutrix had love affairs with the accused also assumes significance.
- **18.** In the given facts and circumstances, I find contradictions between the testimony of PW-1, PW-2 and PW-3 and the testimony of the prosecutrix/victim, compounded by the non-implications of the accused by PW-4.
- **19.** It is well settled that when two views are possible in a criminal trial, the one beneficial to the accused has to be adopted and he has to be given benefit of doubt.
- **20.** In the instant case, on the basis of the evidence on record, I come to the considered view and finding that the prosecution case with regard to the charges against the accused by way of kidnapping, rape and sexual assault is not proved beyond reasonable doubt and therefore, the benefit of doubt has to be given to the accused thereby, entitling him to be acquitted.

#### ORDER

- **21.** On the basis of the evidence and other relevant materials on record of the case, the accused Sh. Hemanta Basumatary stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.
- **22.** His bail bond and sureties stands discharged.

- **23.** A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.
- **24.** Given under my hand and seal on this the 11<sup>th</sup> day of October, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

# **APPENDIX**

# **A. Prosecution witness:**

1. PW-1 : Julee Konwar.

2. PW-2 : Renuka Konwar.

3. PW-3 : Raju Konwar.

4. PW-4 : Pallavi Paul.

5. CW-1 : Prosecutrix.

# B. <u>Defence witness</u>:

Nil.

# **B. Prosecution Exhibit:**

Exhibit-1 : FIR.

# **D. Defence exhibits:**

Nil.

(P Das) Sessions Judge, Morigaon, Assam

### Sessions Special (POCSO) Case No. 04/2015

#### **11.10.2019**:

Accused Sh. Hemanta Basumatary is present along with learned defence counsel.

The judgment, in separate sheet is ready and pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Sh. Hemanta Basumatary stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.

His bail bond and sureties stands discharged.

A copy of this judgement and order shall be sent to the learned District Magistrate Morigaon in compliance with section 365 Cr.P.C.

The instant case stands disposed of on the aforesaid terms.

Sessions Judge Morigaon, Assam