### IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.42/2019 (U/S: 363 R/W Sec. 6 of POCSO Act)

State Versus Mridul Barman, S/O Mahendra Barman, Vill- Khangkhalabari, PS-Udalguri, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

#### APPERANCE:

For the Prosecution: Sri A. Basumatar, P.P., Udalguri

AND

For the accused: Mr. S. Sarma, Advocate.

Evidence recorded on: 3.12.2019. Argument heard on: 3.12.2019.

Judgment delivered on: 3.12.2019.

# JUDGMENT

- 1. The prosecution case, in a short radius, is that on 1.3.2018 the informant Prem Bahadur Chetry lodged an FIR with the Officer-In-Charge, Udalguri PS alleging, inter-alia, that on 22.2.2018 at about 9 AM his grand daughter (real name is withheld, henceforth referred to as the victim) went to school but she did not return within the as usual time. So, they conducted search to locate her whereabouts but she remained traceless.
- 2. On the basis of the FIR police registered a case vide Udalguri Police Station case No.53/2018 U/S 366 IPC and launched investigation of the case. On conclusion of investigation the police laid the charge-sheet against the

accused Mridul Barman U/S 363/376(3) IPC, R/W Sec.6 of POCSO Act appeared to have been committed by him.

- 3. On receipt of the charge sheet Special (POCSO) case No. 42/2019 was registered. Thereupon, process was issued for appearance of the accused. The accused entered his appearance and supplied with the copies of the police documents U/S 173 Cr.P.C.
- 4. Whereupon, after scrutiny of the relevant papers including the case diary and having heard learned counsel of both sides a prima-facie case was made out to presume that the accused had committed the offence U/S 363/376(3) IPC, R/W Sec.6 of POCSO Act and, therefore, formal charges thereunder were framed against the accused and the same on being read over and explained to him to which he pleaded not guilty and claimed to stand trial.
- 5. To establish its case the prosecution has examined as many as two witnesses including the informant and the victim of the case.
- 6. It may be noted at this stage that after examination of the said material witnesses learned P.P. for the State submitted a petition whereby he had urged before this court to close the prosecution evidence without examining the remaining prosecution witnesses in view of the fact that material witnesses including the informant as well as the victim adduced no iota of incriminating evidence in support of the charges levelled against the accused. That being the position, the examination of the remaining prosecution witnesses would not any way improve the prosecution case.
- 7. On the backdrop of the petition, on a close scrutiny of the materials on record including the evidence of the vital witnesses namely the informant and the victim, it was found that there is no vestige of incriminating evidence in the testimony of the vital witnesses including the victim, and therefore, examination of the remaining witnesses become redundant having no scope to improve the prosecution case, and, as such, the petition was allowed and

prosecution evidence was closed. The examination of the accused U/S 313 Cr.P.C. was dispensed with as no incriminating circumstances appeared in the evidence to put before him for seeking his explanation.

- 8. Situated thus, the points for determination in the present case are set up and framed as:-
- (1) Whether the accused on 22.2.2018 at about 9 AM at Khangkhlabari under Udalguri PS kidnapped the victim from her lawful guardian as alleged U/S 363 IPC?
- (2) Whether the accused committed rape on the victim, a girl under 16 years of age as alleged U/S 376(3) IPC?
- (3) Whether the accused committed aggravated penetrative sexual assault upon the victim, aged about 16 years as alleged U/S 6 of POCSO Act?
- 9. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

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

10. PW1, Prem Bahadur Chetry is the first informant of the case. He has testified in his evidence that the victim is his grand daughter and the accused is his next door neighbour. The occurrence took place about 1 ½ years ago. On the day of occurrence his grand daughter did not return from school and on vigorous search remained traceless. One day she came back alongwith the accused and told before them that she on the day of occurrence voluntarily eloped with the accused and stayed with him for about one year in Kerela. Out of their co-habitation a male child was born. He is now 4/5 months old. After returning from Kerela and having come to know from his grand daughter that she went away with the accused out of love affairs and cohabited with him and out of their cohabitation a male baby was born and, as such, he solemonised her marriage with the accused. At the time of occurrence his grand daughter was aged about 18 years. On the basis of the FIR police arrested the accused

and also got her statement recorded before the Magistrate U/S 164 Cr.P.C. He has no grievance against the accused as his grand daughter eloped with the accused on her own volition. Ext.1 is the FIR. Ext.1(1) is his signature.

- 11. In cross-examination, this witness reiterated the same version stated that after returning from Kerela, he solemonised his grand daughter's marriage with the accused as she on her own accord eloped with the accused who was a major girl at that time.
- 12. Close on the heels of the evidence of the informant (PW1) is the testimony of the victim (PW2), who is the most vital witness of the case. Her evidence on scrutiny bears no incriminating evidence against the accused to support the charges levelled against the accused. She has stated unequivocally that on the day of occurrence she voluntarily eloped with the accused due to having love affairs prior to the occurrence and eventually she solemonised marriage with the accused and out of their cohabitation a male baby was born who is now about 3/4 months old. She has further revealed that at the time of occurrence she was above 18 years old. Her statement U/S 164 Cr.P.C. was got recorded vide Ext.2 wherein she disclosed that she eloped with the accused on her own accord.
- 13. In view of the above discussion of the evidence on record, it has emerged crystal clear that the material witnesses of the case namely, PW1 (informant) and PW2 (victim) have given completely go bye to the prosecution case without adducing any plausible evidence to bring home the charges levelled against the accused. Top of all, both the victim and the accused are now living as husband and wife having a male baby after solemnizing of their marriage socially. That being so, I have no hesitation to hold that the prosecution has failed to prove its case for which accused is entitled to acquittal.

14. In the result, I am constrained to hold that the accused Mridul Barman is not guilty U/S 363/376(3) IPC R/W Sec. 6 of the POCSO Act. Therefore, he is acquitted thereunder and set him at liberty forthwith.

Given under my hand and seal of this Court this  $3^{rd}$  day of December, 2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Special Judge, Udalguri.

#### APPENDIX:

A)Prosecution witnesses:

i) PW1 Prem Bahadur Chetry ii)PW2 Smti. Puja Devi Barman

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 FIR.

ii)Ext.2 Statement of the victim U/S 164 Cr.P.C.

Dictated and corrected by me.

Special Judge, Udalguri