IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>66 OF 2017</u>

(Under Section 4 of the POCSO Act, arising out of G.R. Case No. 3048 of

2017)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Khagen Khodal

Son of Late Mohan Khodal,

Resident of Jaysidhi Khodal basti

Police Station – Sootea Dist:- Sonitpur, Assam

Date of framing Charge :- 14-11-2017

Date of Recording Evidence :- 28-11-2017

Date of examination of accused u/s :- 28-11-2017

313 Cr.P.C

Date of Argument :- 28-11-2017

Date of Judgment :- 28-11-2017

Counsel for the Prosecution :- Mr. Munin Ch. Baruah

Special Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. A.K. Saikia, Advocate, Legal Aid

Counsel.

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JUDGMENT

- 1. In this case accused Sri Khagen Khodal is put for trial for allegation of charge under Section 4 of the POCSO Act, 2012.
- 2. The factual matrix according to the FIR in brief is that on or about 10 a.m. of 02-08-2017 informant's 12 years old minor daughter while went to Assam Gramin Vikash Bank accused kidnapped her. Till 03-08-2017 the informant tried most to recover his minor daughter but failed. It is suspected that the accused after kidnapping his minor daughter secretly kept in some unknown place. Hence, this prosecution case. The ejahar was filed by complainant Jamir Ali on 07-08-2017 before the O/C Sootea Police station.
- 3. On receipt of the aforementioned FIR, the Officer-In-Charge of Sootea Police Station registered a case being Sootea P.S. Case No. 102/2017 u/s 366(A) of IPC. After completion of usual investigation, the O/C Sootea Police Station filed charge sheet u/s 366 of IPC r/w section 4 of the POCSO Act against the accused Sri Khagen Khodal.
- 4. On being appeared the accused before this Court, after hearing both parties, charge u/s 4 of POCSO Act, 2012 was framed against the accused Sri Khogen Khodal and particulars of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution has examined five numbers of witnesses. Learned counsel for the accused submitted to close the evidence on the ground that the complainant and victim and other witnesses no way supported the prosecution case, so it would be futile to examine the other witnesses. I have heard the learned Special Public Prosecutor. the statement of the victim, the complainant and other witnesses, it appears that they were no way supported the prosecution case, therefore, I think that prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed. Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the

accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.

- **6.** I have heard the argument put forward by the learned counsels of both sides.
- **7.** The point for decision in this case is that -
 - (1) "Whether on 02-08-2017 at Arunachal Pradesh, the accused committed penetrative sexual assault on "Miss X" (victim) and thereby committed an offence punishable under section 4 of the Protection of Child from Sexual Offences Act?

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **9.** PW 1 Sri Paresh Basumatary, who is the complainant and father of the victim, stated that accused Khagen Khodal is the younger brother of his son-in-law. Victim is his daughter. At the time of incident, she was only 12 years old. The incident took place on 02-08-2017. At the evening time, while he returned to his house from his work, he came to know that his victim daughter was not available and she is found missing. He vigorously searched but in vain. Accused resides in a house in a common court-yard of my house. They and their family members used that court-yard sometimes as a path. After three days, his son-in-law (Dangar Jowain) Gonesh Khodal told him that accused had taken his victim daughter. Then he asked him to bring back his daughter but he did not return his daughter. So, he filed this case. Then victim girl was recovered by police from Harchura bagan along with the accused after 15/16 days. So, he filed the ejahar on 07-08-2017. Ext. 1 is the ejahar and Ext. 1(1) is his signature. The ejahar was written by one scribe as per his dictation.

In cross-examination he admitted that he does not know how much age was mentioned of my daughter at the time of her admission by his wife. He has not seen the accused kidnapping his daughter. He does not want to proceed the case as the accused is his relative.

10. PW 2, Sri Nanda Ram Basumatary, who stated that he knows the accused, victim and complainant as they are his co-villagers. The incident took place on 02-08-2017. ON 06-08-2017 the complainant being the father of the victim called him and other villagers and reported them that his daughter was missing and therefore searching his daughter. They also searched her. They came to know from the father of the victim that he suspected the accused in kidnapping his daughter.

In cross-examination, he admitted that he has not seen the incident. He has no personal knowledge about the incident.

11. PW 3 Sri Deba Brahma and **PW 4** Sri Hema Muchahary have stated that they know the victim, complainant and accused. The incident took place on 02-08-2017 and the father of the victim informed them that his daughter was missing on the said day and he suspected the accused Khagen Khodal has taken away his victim daughter.

In cross-examination, they admitted that they have no personal knowledge about the incident. There was no village meeting was held for the said incident.

12. PW 5, the victim Miss "X", who was examined after making enquiry to test her intelligence and ability to give rational answers. She stated before this court that she stated that she went to Gaonlia Bank with her cousin Sabitri. Sabitri asked her to hand over the carry bag to the accused who is the younger brother of her brother-in-law. Accordingly, she went there. As she left the house to her brother-in-law's house without permission of her father so she could not gather guts to come out from the house of her brother-in-law. Besides, her father has raising alarm. She further stated that accused/brother-in-law did not do any misdeed to her and thereafter she went with her brother-in-law i.e. the accused to Arunachal Pradesh and remained there for four days. During those days accused did not commit any misdeed to her. From there she went to the house of maternal uncle of her brother-in-law. Thereafter police recovered them. She was medically examined by doctor and her statement was

also recorded by Magistrate. Ext. 2 is the 164Cr.P.C. and Ext. 2(1) to 2(2) are her signatures.

In cross-examination, she admitted that she loves the accused. She at her own will eloped with the accused. She has no objection if the accused is enlarged on bail.

- **13.** These much is the evidence of the prosecution.
- **14.** Here in this case since the case is charged u/s 4 of POCSO Act, so the most trust-worthy evidence in this case is the statement of the victim.
- **15.** To prove the charge under section 4 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 3 of the POCSO Act.

Section 3 of the POCSO Act quoted as follows:

<u>Section 3. Penetrative Sexual assault,</u> - A person is said to commit "pemetrative 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; or
- (b) he 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 o 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 of the child or makes the child to do so to such person or any other person.
- 16. In the present case, neither the complainant nor the victim supported the prosecution case. The statement of the complainant and victim no way reveals any ingredients as stated above. The victim stated that she went to Gaonlia Bank with her cousin Sabitri. Sabitri asked her to hand over the carry bag to the accused who is the younger brother of her brother-in-law. Accordingly, she went there. As she left the house to her brother-in-law's house without permission of her father so she could not gather guts to come out from

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the house of her brother-in-law. Besides, her father has raising alarm. She

further stated that accused/brother-in-law did not do any misdeed to her and

thereafter she went with her brother-in-law i.e. the accused to Arunachal

Pradesh and remained there for four days. During those days accused did not

commit any misdeed to her. From there she went to the house of maternal

uncle of her brother-in-law. Besides, she simply stated that she did not have

any repentance against the accused, therefore, she has no any objection if the

accused is enlarged on acquittal.

In the case like section 4 of pOCSO Act, the victim is the star witness.

When the victim gives goodbye to the prosecution case, it will be futile to

discuss the other evidence of the witnesses. Here in this case as stated above,

the victim failed to reveal any materials against the accused.

17. Under such circumstances, I have no hesitation to hold that the

prosecution has failed to prove the charge levelled against the accused beyond

any reasonable doubt. Therefore, I acquit the accused Sri Khagen Khodal and

set him at liberty.

18. The liability of the bailor is hereby discharged.

19. Send back the LCR.

Given under my Hand and Seal of this Court on this the 28th day of

November, 2017.

(Ashok Kumar Borah)
SPECIAL JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

APPENDIX

Prosecution Witness

Prosecution Witness No.1 1. Sri Paresh Basumtary, complainant :-

2. Prosecution Witness No.2 Sri Nanda Ram Basumatary

3. Prosecution Witness No.3 Sri Deba Brahma,

4. Prosecution Witness No.4 Sri Hema Muchahary

5. Prosecution Witness No.5 Victim

Exhibits

Ext. 1 : Ejahar

Ext. 2 : statement of the victim u/s 164 Cr.P.C.

> (Ashok Kumar Borah) **SPECIAL JUDGE SONITPUR: TEZPUR**

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