

IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present: **Shri S. Das, A.J.S.,**
Special Judge,
Dhemaji,

JUDGMENT IN SPECIAL (POCSO) CASE NO. 14(DH) 2018.

U/s 366 IPC read with Sec. 4 of POCSO Act.

(G.R. Case No.128/2018 (DMJ); Dhemaji P.S. Case No.54/2018 u/s 366(A) IPC R/W Sec. 8 of POCSO Act)

The State of Assam

- Versus -

Shri Raju Nath,Accused Person
S/O Biren Nath,
R/O Sensuwa Gaon,
P.S. Boginadi,
Dist.- Lakhimpur,

Appearance:

Shri A. Fogla,For the State
Public Prosecutor
Smt. Beauty Phukan, AdvocateFor the Accused
(Legal-Aid Counsel)

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Dates of prosecution evidence : 06-08-2018, 01-10-2018, 10-12-2018,

04-01-2019, 07-01-2019, 21-05-2019.

Date of arguments : 26-08-2019.

Date of Judgment : 18-09-2019.

JUDGMENT

1. The prosecution case in brief is that on 10-2-2018 complainant- Shri Achyut Sonowal lodged an ejahar with Dhemaji Police Station alleging interalia that on 8-2-2018 at about 8 A.M. in the morning while his minor daughter-Smti 'X' aged about 12 years was going to her school on foot, the accused-Raju Nath kidnapped/abducted her from the road near Dhemaji Railway Station and took her away by Rail. They searched for the victim but did not find her. Railway Police of Lakhimpur apprehended the accused and the victim and they informed the Dhemaji Police Station. Then Police brought booth the victim and the accused to Dhemaji Police Station.

2. On receipt of the ejaha, Police registered a case vide Dhemaji P.S. Case No. 54/2018 u/s 366(A) IPC read with Sec. 8 of POCSO Act. On completion of investigation police submitted Charge-sheet against the accused-Shri Raju Nath u/s 366 of IPC Reads With Section 8 of POCSO Act.

3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 366(A) of IPC read with Sec. 8 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 8 witnesses including I/O and M/O. At the closure of prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of total denial. However, defence declined to adduce evidence in support of the plea.

4. **Points for determination :**

(1) That you, on 8-2-2018 at about 8 AM at Village-Baligaon under Dhemaji Police Station, you abducted/kidnapped Smt. 'X' a minor girl aged about 12 years with intent that she might be compelled to marry you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 A of IPC.

(2) That you, on the same day, and thereafter committed penetrative sexual assault on Smt. "x" and thereby you committed an offence punishable u/s 4 of POCSO Act.

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5. I have gone through the evidence on record and heard arguments of both sides.

Discussion of Evidence:

6. **PW1 Smti 'X'** (the victim) stated that the complainant is her father. She knows the accused. The occurrence took place about 3 months back (from the date of her deposition). On the date of occurrence at about 8 AM while she was going to school the accused Raju Nath met her on the road and he offered her chocolate to eat. When she ate the chocolate, she became senseless. The accused took her to his aunt's house at Lakhimpur and there he committed bad act with her. The accused pressed her breast and kissed her. When the accused came to Railway station to bring her back to her house, police apprehended the accused and her and informed her parents. After recovery her father lodged complaint at Dhemaji police station. Police recorded her statement and produced before Magistrate and she gave statement before Magistrate and also got her medically examined. Ext.1 is her statement u/s 164 Cr.PC. Ext.1(1) and 1(2) are her signatures.

In cross-examination she got to know Raju Nath after the incident. She denied the defence suggestion that she met the accused in a railway station at Helem. She cannot exactly say whether it was the accused who offered her chocolate to eat. She denied that she was kidnapped by another boy and Raju Nath met her in railway station at Helem. She denied the defence suggestion that she told Raju Nath that she wanted to go to Dhemaji and then Raju Nath, who also hails from Lakhimpur Boginadi, told her that he would help her to come to Dhemaji. She denied the defence suggestion that Raju Nath Did not physically abuse her. She denied that Raju Nath did not offer her chocolate to eat. She also denied the defence suggestion that Raju Nath did not took her to his aunt's house at Lakhimpur and there he committed bad act with her.

7. **PW2 Sri Achyut Sonowal** stated that he is the complainant. He does not know the accused. Victim 'X' is his daughter. The incident took place in the month of February 2018. On the date of occurrence while his daughter was going to school she went missing. His daughter did not return home from school and they searched for her and came to know that her daughter had been apprehended by Lakhimpur

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police. Then they went to North Lakhimpur Police Station and found their daughter in the Police Station. They took zimma of his daughter and coming back to Dhemaji, he lodged complaint at Dhemaji police station. On being asked his daughter told him that the accused Raju Nath had kidnapped/abducted his daughter to Lakhimpur. At the time of incident his daughter was aged about 12 years. Ext-2 is the ejahar. He put his thumb impression in the ejahar.

In cross-examination PW2 stated that he did not know as to how his daughter reached Lakhimpur. He denied the defence suggestion that Raju Nath did not kidnap/abduct his daughter.

8. **PW3** Smti Bhugeswari Sonowal stated that complainant is her husband. She does not know the accused. Victim Smt 'X' is her daughter. The incident took place in the month of February 2018. On the date of occurrence while her daughter was going to school she went missing. Her daughter did not return home from school and they searched for her and came to know that her daughter had been apprehended by Lakhimpur police. Then they went to Lakhimpur Police Station and found their daughter in the Police Station. They took jimmia of her daughter and coming back to Dhemaji, her husband lodged complaint at Dhemaji police station. On being asked her daughter told her that the accused Raju Nath had forcibly kidnapped/abducted her daughter to Lakhimpur with intent to compel to marry her and also stated that the accused had committed sexual intercourse with her. At the time of incident her daughter was aged about 12 years.

In cross-examination PW3 denied the defence suggestion that she did not state before the I/O that her daughter told her that Raju Nath had forcibly kidnapped/abducted her daughter to Lakhimpur with intent to compel to marry her and also stated that the accused had committed sexual intercourse with her.

9. **PW4** Sri Bhadra Sonowal stated that he knows the complainant and the accused. Victim Smt. 'X' is his elder sister's daughter. The incident took place about 10 months back. On the date of occurrence the victim went missing while she was going to school. Lakhimpur Police apprehended the victim and the accused.

In cross-examination PW4 stated that he had not made any statement before police. Police also did not examine him.

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[Signature]

10. **PW5** Sri Santanu Sonowal stated that he knows the complainant and the accused. Victim Smti 'X' is known to him. The incident took place in the month of February 2018. One day Railway Police apprehended the accused along with the victim at Helem Railway Station and handed over them to Lakhimpur GRP. And Lakhimpur GRP informed Dhemaji Police and Dhemaji Police along with parents of the victim brought her from Lakhimpur to Dhemaji. He also accompanied victim's guardian to Lakhimpur.

In cross-examination PW5 stated that he had not seen the accused taking away the victim from Dhemaji to Helem.

11. **PW6 Dr. Debajit Doloi** stated that on 10-02-2018 he examined Smt. 'X' (victim) at Dhemaji Civil Hospital on police requisition vide No. 54/2018 u/s 366 A IPC on being escorted and identified by WHG-Dolly Bhuyan. On examination he found as follows :-

General Physical Examination:

Built & nutrition - Normal

Weight- 40 kg. (Approx.)

Height- 4 Feet

Development of hair- a) Axillary – Not well developed, b) Pubic- Not well developed.

Breast- a) Development- Well developed, b) Findings- B/L single bite mark present over nipple, two bite mark present over upper part of left breast, nail mark present over both breasts.

Marks of violence in the body :- On examination, he found that there are marks of violence present on the body surface of the victim-Durgeswari Sonowal.

Examination of Genitalia :-

Development of genitalia- Well developed.

Pubic Hair – Not well developed.

Clitoris - Normal,

Labia majora and minora – Normal,

Fourchette- Normal.

Hymen - Ruptured

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Vagina - Normal,

Injuries - Nil,

Discharge and stains- Absent.

Internal Examination :- On internal examination (Dureing P/V), hymen found ruptured and the vaginal orifice founder tender.

Laboratory investigation :

Vaginal smear sent for detection of spermatozoa.

Result- No spermatozoa found under microscopic examination.

Pregnancy Test (FCG Urine)- Found negative.

Name of Pathologist- Dr. J Moran.

Ultrasonography- Not done.

Radiological Examination - Part X-Ray wrist and elbow joint – right side, both AP and lateral view.

Opinion :- On radiological examination, the age of the person is found above 15 years and below 17 years. Name of Radiologist- **Dr. Bhupen Kuli**. On examination of the victim girl, Doctor (PW6) opined that only external juries are present on the body surface of the victim, no other evidence found. On radiological examination, the age of the victim found above 15 years and below 17 years.

Exhibit-3 is the medical report and EXt-3(1) is his signature. Exhibit-4 is the vaginal swab/urine pregnancy test examination report and EXt-4(1) is the signature of DR. J. Moran which is known to him. Exhibit-5 is the radiological report and Ext-5(1) is the signature of Dr. B. Kuli which is known to him.

Defence declined to cross-examine the Doctor (PW6).

12. **PW7.** Idrish Ali stated that on 09-02-2018 he was posted at Dhemaji Police Station as Attached Officer. On that day ASI Jayanta Karmakar GRPS, North Lakhimpur brought the accused **Raju Nath** and victim girl from Lakhimpur to Dhemaji and handed over to OC Dhemaji Police Station. The accused and the victim were apprehended at Helem Railway Station. He made GD Entry vide No.301 dated 09-02-2018 and OC Dhemaji entrusted him for investigation. He recorded statement of ASI Jayanta Karmakar u/s 161 Cr.PC. He also recorded victim's statement u/s 161 Cr.PC. The victim in her statement disclosed that the accused had taken her away

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from Dhemaji Railway Station. He visited the PO and drew sketch map. On 10-02-2018 OC Dhemaji received an ejahar from Achyut Sonowal and registered a case vide Dhemaji PS Case No.54/2018, u/s 366A IPC R/W section 8 of POCSO Act and entrusted him for investigation of the case. He recorded statement of complainant and other witnesses u/s 161 Cr.PC. He got the victim medically examined. The accused was formally arrested and forwarded to court. Victim was produced before magistrate and she gave her statement before magistrate u/s 164 Cr.PC. He collected the medical report of the victim. After completion of investigation he filed charge sheet against the accused Raju Nath u/s 366 A IPC, R/W section 8 of POCSO Act. Ext.6 is sketch map and Ext.6(1) is his signature. Ext.7 is charge sheet and Ext.7(1) is his signature.

In cross-examination Witness- Smt. Bhugeswari Sonowal did not state before him that the accused took away her daughter to Lakhimpur with intent to marry her. This witness also did not state before him that the accused also physically abused her or harassed her.

Appreciation of Evidence :

13. Prosecution examined the victim as PW1. According to PW1 on 7 the date of occurrence at the relevant time while she was going to school accused Raju Nath met her on the road and offered her chocolate which she took and ate and then she became senseless. She also stated that accused took her to his aunt's house at Lakhimpur and there he physically abused her by pressing her breast and also kissed her. The victim and the accused were apprehended when the accused came to bring her back to Dhemaji. In cross examination victim stated that she cannot say exactly whether the accused was the person who offered her chocolate and she became senseless. However she denied defence suggestion that accused Raju Nath did not kidnap her. In her statement u/s 164 Cr.PC she stated that accused Raju Nath kidnapped her. Further she stated in her statement u/s 164 Cr.PC that while accused Raju Nath prepared to take her to Silapathar by bus, police apprehended them. As per evidence of the IO the accused and the victim were apprehended at Helem Railway Station. So far as evidence of other witnesses is concerned PW2 is the father of the complainant and stated that his daughter went missing while going to school and she was recovered by Lakhimpur Police and he took zimma of his

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daughter and lodged complaint against Raju Nath. PW3 is the mother of the victim made similar statement as PW2. PW4 stated that accused Raju Nath and the victim were apprehended at Helem Railway Station and handed over to Lakhimpur GRP. The victim was examined by doctor and doctor after examination opined that external injuries are present of the body surface of the victim and no other evidence found.

14. On consideration of the evidence on record it is found that the victim in her evidence on oath during trial mentioned that accused Raju Nath kidnapped her and in her statement u/s 164 Cr.PC also she mentioned that Raju Nath kidnapped her. But her version in cross examination that she cannot exactly say whether the accused present in the dock was the person who kidnapped her. This version of the victim makes a dent in the prosecution case in as much as the identity of the accused become doubtful. The defence plea is that the accused met the victim at Railway Station and he offered his help to bring her to Dhemaji.

15. I have given my anxious thought to the fact materials and I find it difficult to come to a definite conclusion that it was Raju Nath involved in the commission of the alleged kidnapping and sexual assault. Though the trial is under the provisions of Special Act and there is provisions for presumption of law, here in the instant case we are faced with material contradictions in the evidence of the victim relating to identity of the accused.

16. In my considered opinion failure to identify the accused as being the perpetrator of the crime creates a doubt in the mind of the court as to the involvement of the accused and the alleged commission of offence.

17. In view of what has been discussed above, I find that prosecution has failed to prove the charges u/s 366 A of IPC RW section 4 of POCSO Act against the accused beyond all reasonable doubt.

ORDER:

18. In the result I find the accused **Raju Nath** not guilty u/s 366 A of IPC RW section 4 of POCSO Act. Accordingly he is acquitted of the charges levelled against him. Set him at liberty forthwith.

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19. Judgment is pronounced in open Court.
20. Given under my hand and seal of this Court on this the **18th day of Sept/2019.**

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(S. Das)
Special Judge,
~~Dhemaji.~~