IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 19 (JN)/ 2018.

U/S 366/ 376 IPC R/W Sec.4 of POCSO Act.

(G.R. Case No.188/2017; Simen Chapari P.S. Case No.38/2017 Under Section-366 (A) of the Indian Penal Code)

The State of Assam

- Versus -

Shri Magheswar Deka

.....Accused Person

S/O Shri Gandhi Deka,

R/O Bera CHapari,

P.S. Jonai,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri K.C. Sonowal, Advocate

.....For the Accused

Date of prosecution evidence

: 12-09-2018.

Date of argument

: 12-09-2018.

Date of Judgment

: 26-09-2018.

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<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 19-12-2017 complainant- Smti Jan Borah lodged an ejahar with Simen Chapari Police Station alleging interalia that on 18-12-2017 at about 2 PM the accused-Magheswar Deka with the help of one Shri Jitul Chetia, kidnapped/abducted his minor daughter-Miss 'X' aged about 15 years from his house by inducing her.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Magheswar Deka u/s 366(A) of IPC R/W section 4 of the 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 366/376 IPC R/W Sec. 4 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 two witnesses. After closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of denial.

4. Points for determination:

- (1) That you, on 18-12-2017 at about 2 PM at Village-No.2 Narayanpur Bali Gaon under Simen Chapari Police Station, you kidnapped/abducted Miss 'X', a minor girl aged about 15 years from her house with another boy-Jitul Chetia with intent that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.
- (2) That you, on the same day, time and place you committed rape on Miss 'X', a minor girl aged about 15 years, having sexual

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intercourse against her will and consent and thereby you committed an offence punishable u/s 376 of IPC.

- (3) That, on the same day, time and place you committed penetrative sexual assault on Miss 'X', a minor 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** is the victim Miss 'X'. Complainant is her mother. She had love affairs with the accused and she eloped with him and got married. Her family members were opposed to such marriage and her mother lodged complaint against the accused. At the time of marriage she was above 18 years. Now, she is living together with the accused as husband and wife. She has produced her school certificate in the Court. As per the school certificate, her date of birth is 5-01-1999. Exhibit-2 is the photo copy of the school certificate containing date of birth proved in original.

In cross-examination PW1 stated that the accused never forced her to go with him. She has no objection if the accused is acquitted from the case.

7. **PW2** Smti Jan Borah stated that she is the complainant. She knows accused. Victim is her daughter. Her daughter/victim had love affairs with the accused and she eloped with the accused and got married. They were opposed to such marriage and she lodged complaint against the accused. At the time of marriage, her daughter was above 18 years of age. Now, they are living together as husband and wife. Exhibit-1 is the ejahar and EXt-1(1) is her signature.

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In cross-examination, she stated that they have accepted the accused as their son-in-law. Her daughter is living with the accused peacefully. She prayed that the accused may be acquitted in this case.

Appreciation of evidence:

- 8. From the discussion of the evidence on record, it appears that in this case the victim and her mother were examined as P.W-1 and PW2 respectively. PW1 is the Victim Miss 'X' and PW-2 is the mother of the victim girl. In their evidence both the vital witnesses stated that the victim had love affairs with the accused and so she eloped with him and got married. Parents of the victim were opposed to such marriage and so PW2, mother of the victim, lodged complaint against the accused. Both the PWs stated that at the relevant time of occurrence, the victim was above 18 years of age. Now, they (victim & accused) are living together as husband and wife. In crossexamination PW1 stated that the accused never forced her to go with him. She has no objection if the accused is acquitted from the case. PW2 in her cross-examination also stated that they accepted the accused as their son-inlaw. Her daughter/victim is now living together with the accused peacefully. She prayed before the Court that the accused may be acquitted in this case. From the evidence of the witnesses (PWs-1 and 2), it is seen that both the parties have compromise the case outside the Court and so they are not willing to depose against the accused. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.
- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. I find that the prosecution has totally failed to prove the charges u/s 366/376 of IPC read with Sec.- 4 of the POCSO Act against the accused.

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- 10. In view of the above, I find the accused-**Magheswar Deka** not guilty u/s 366/376 of the I.P.C. read with Section-4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him.
- 11. Set him at liberty forthwith.
- 12. Judgment is pronounced in open Court.
- 13. Given under my hand and seal of this Court on this the **26th** day of September/2018.

Special Judge Dhemail. Dhemail.