

IN THE COURT OF THE SPECIAL JUDGE

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CHIRANG, KAJALGAON.

## Special (P) Case No. 10(S)/2019 U/S 366/376(2)(i) IPC R/W Section 4 of POCSO Act.

State of Assam

Vs.

Md. Dilbar Bhuyan

..... Accused

PRESENT:

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

#### ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri M. Islam, Ld. Advocate

Date of evidence

: 10.05.19, 05.07.19

Date of Argument

: 05.07.2019

Date of Judgment

: 05.07.2019

### <u>J U D G M E N T</u>

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- 1. The prosecution case in brief is that on 05.02.2019, the informant Paran Ali lodged an FIR before I/C, Garubhasa Out Post alleging that on 04.02.2019, Monday, at about 8.00 AM, his daughter Miss 'X' (name is withheld), went to her school as usual but she did not return back to her home. Later on, they came to know that accused Dilbar Bhuyan kidnapped his daughter and at about 4.00 PM, the accused informed the informant through mobile No. 7002637810 that he kidnapped his daughter.
- 2. After receiving the FIR, the I/C, Garubhasa Out Post made Garubhasa Out Post G.D. Entry No. 99 dtd. 06.02.2019 and forwarded the FIR to the O/C, Sidli Police Station for registering a case. Accordingly, the O/C of Sidli P.S. registered a case being numbered as Sidli P.S. Case No. 04/2019 U/S 366 IPC and entrusted A.S.I. Kati Nath Muchahary to take pre-step and S.I. M.

Basumatary to investigate the case. Accordingly, the Investigating Officer arrested the accused, visited the place of occurrence, drew sketch map of the P.O., recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC, collected the medical report and after completion of investigation, submitted charge-sheet against the accused Dilbar Bhuyan U/S 366/376(2)(i) IPC R/W Section 4 of POCSO Act. After receiving charge sheet, copies of relevant documents were furnished to the accused person. Accused person was produced from jail. On perusal of entire materials on record and hearing both sides and after having found a prima facie case, formal charge U/S 366/376(2)(i) IPC read with Section 4 of POCSO Act was framed against the accused. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail after recording evidence of victim.

 In support of the case prosecution side examined as many as 4 (four) witnesses.

Following witnesses are examined:-

- (1) Victim Miss 'X' (name is withheld) as PW 1
- (2) Informant Md. Paran Ali as PW 2
- (3) Musstt. Nur Bhanu Nesa as PW 3
- (4) Md. Mofidul Hoque as PW 4

Considering the evidence of material witnesses, learned P.P. prayed to close the evidence. I have also found that further evidence would not establish the case against the present accused for which further evidence was closed.

- 4. Statement of the victim U/S 164 Cr.P.C. was exhibited as Ext.1. FIR was exhibited as Ext. 2. Birth certificate of the victim was exhibited as Ext.3.
- Defence plea is of total denial. Defence adduced no evidence.
- Heard argument from both sides.

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# Now points for consideration:-

For the offence U/S 366 of IPC

1. Whether on 04.02.2019, at about 9.00 A.M., at Shyamthaibari National Highway under Sidli P.S., the accused kidnapped Miss 'X' (name is withheld), minor daughter of the informant with intent to marry her against her will and with intent to commit illicit intercourse?

For the offence U/S 376(2)(i) of IPC

2. Whether on the same date, time and place and thereafter, the accused committed rape upon Miss 'X' (name is withheld), minor daughter of the informant aged below 16 years?

For the offence U/S 4 of POCSO Act

3. Whether on the same date, time and place and thereafter in other place, the accused committed penetrative sexual assault upon Miss 'X' (name is withheld), minor daughter of the informant?

## DISCUSSION, DECISION AND REASONS THEREFOR:-

- 8. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned all points simultaneously for the sake of convenience.
- 9. PW 1 is the victim, who deposed that on the date of occurrence, she was reading in Class IX at Kashikotra Urabashi Memorial High School. She further deposed that she failed in Class VI and Class VIII. According to this witness, she developed love affairs with the accused. On 04.02.2019, she met the accused according to pre-plan at Samthaibari. From where, both of them fled in a Maruti Car to Dholpur in the district of Darang. They stayed thereon for four days in the house of the uncle of the accused. She stayed along with the aunt of the accused. After that, accused informed

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the matter to the father of the victim, the informant. Knowing this fact, her father lodged the present FIR. Her parents came to the house of said uncle of the accused and took her. It was agreed by the informant, the father of the victim that she would be married to the accused after two years. She clearly stated that accused did nothing. She had stated before the Magistrate as tutored by police. Said statement recorded U/S 164 CrPC is exhibited as Ext.1.

10. PW 2 is the informant Paran Ali, the father of the victim. According to him, at the time of occurrence, age of the victim was 15 years. On the date of occurrence, her daughter, the victim went to her school at Kashikotra as usual but she did not return for which he searched different places but did not find her. On next day morning, he was informed over phone by the victim that she eloped with the accused and both of them fled away. She also gave the address where they were staying at that time. After that, he along with his wife went to the place where his daughter was kept by the accused. After that they made an agreement that victim would be married to the accused and accordingly he took back his daughter to their home. This witness further deposed that victim clearly stated that she developed love affairs with the accused. No any sexual assault was committed by the accused as stated by the victim to him.

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- 11. After going through the evidence of PW 1 and PW 2, it is revealed that no any sexual act was done by the accused. It is found from their evidence that victim, according to their pre-plan, went to Dholpur of district Darang along with the accused. It is also stated by victim that accused informed her father.
- 12. PW 3 is the mother of the victim, who deposed that the age of her daughter at present is about 18 years. There was love affair between the victim and accused. On the date of occurrence, victim went to her school from where, she fled away. She also informed to her that she fled away with the accused. Then she informed the matter to the informant. After that, accused contacted her husband over phone. They visited the place where accused and victim were staying. After that both parties made an agreement that victim would be married to the accused after attaining the age of majority. On said

condition, the victim was returned back along with them. This witness also clearly stated that accused did not commit any bad act or any sexual assault upon the victim. Due to misunderstanding, her husband lodged the FIR against the accused. They have already accepted the accused as their son-in-law. During cross, she deposed that she had no any allegation against the accused and at the time of occurrence, the age of her daughter was 17 years and she eloped with the accused according to her own will. She further deposed that the accused informed them immediately after the elopement of their daughter with him. It is also revealed from her cross-examination that she was married to the informant about 20 years ago and victim was born after two years from their marriage.

- 13. PW 4 had no any direct knowledge about the incident. He only heard that there was love affair between the accused and victim and victim eloped with the accused.
- 14. After going through the entire evidence on record, it is found that age of the victim was about 17 years in the border line of age of majority. She went with the accused according to her own will. She was not forced by the accused. She made plan with the accused and according to their pre-plan, both of them met at Samthaibari and went to Dholpur in the district of Darang in a Maruti vehicle. It is also stated by PW 1 that she failed in two classes. It is found that accused did not induce the victim and accordingly, he took her to Dholpur. So, ingredient of kidnapping is missing. It is also found from the evidence of PW 3, the mother of the victim that immediately after the elopement, accused informed the father of the victim. As stated by accused, the informant identified the place. So, intention on the part of the accused is clear that he did not take the victim. No any sexual act was done by him as stated by the victim. This fact was also corroborated by her parents. They also agreed to give marriage of their daughter with the accused. The mother of the victim clearly stated that due to misunderstanding, informant lodged the FIR and at present, they accepted the accused as their son-in-law. Considering all these aspects revealed from the evidence on record, in my view, accused cannot be booked for any one of the offences mentioned above. As there is no any whisper for offence regarding sexual act committed by accused, so

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offence U/S 376(2)(i) read with Section 4 of POCSO Act is not attracted. On the other hand, it was not proved from the evidence that accused took the victim. So, main ingredient of kidnapping is also missing. So, all points mentioned above are remained as not proved. Accused is no found guilty.

#### ORDER

- 15. Prosecution miserably failed to prove the case U/S 366/376(2)(i) IPC read with Section 4 of POCSO Act against accused Dilbar Bhuyan. Accused is acquitted and set at liberty. His bail bond is cancelled.
- 16. Seized articles, if any, shall be disposed of according to law.
- 17. A copy of the Judgment shall be given to the District Magistrate, Chirang for information.

Given under my sign and seal of this Court on this the  $5^{\text{th}}$  day of July, 2019, at Kajalgaon, Chirang.

Dibyyyh Mahanla (D.J. Mahanta) 5/1/19 Special Judge, Special Judge Chirang Kajalgaon

Dictated and corrected by me,

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### <u>APPENDIX</u>

### Prosecution witness:

PW 1 – Victim Miss 'X' (name is withheld) PW 2 – Informant Md. Paran Ali PW 3 – Musstt. Nur Bhanu Nesa

PW 4 - Md. Mofidul Hoque

# Exhibit (Prosecution):

Ext-1 Statement of the victim U/S 164 Cr.P.C.

Ext-2 FIR

Ext-3 Birth certificate of the victim

### **Material Exhibit (Prosecution):**

Nil.

### **Defence Witness:**

Nil.

### **Defence Exhibit:**

Nil.

(D.J. Mahanta) Special Didde Chir <u>Chirang</u>algaon