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

SPI. (<u>POCSO</u>) Case No.26/2019 (U/S: 366 IPC R/W Sec. 6 of POCSO Act)

State Versus Amit Newar @ Bishnu Newar, S/O Late M. Kumar Newar, Vill- Hatipukhuri, PS-Rangapara, Dist-Sonitpur.

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. R. Khaklary, Advocate. Evidence recorded on: 7.11.19, 14.11.2019

Argument heard on: 20.11.2019.

Judgment delivered on: 20.11.2019.

#### JUDGMENT

- 1. The prosecution case, as depicted in the FIR, in short, is that on 23.1.2018 the informant, Smti. Malati Boro longed an FIR with the Officer-In-Charge, of Tangla PS, alleging amongst others that her daughter ((real name is withheld, henceforth referred as the victim) was missing from the midnight of 22.1.2018. It is also mentioned in the FIR that from a reliable source they came to know that the person with mobile No. 9957565481 was involved in her missing.
- 2. Based on the FIR the O/C, Tangla PS registered a case vide Tangla Police Station case No.13/2018 U/S 366 IPC and undertaken the investigation of the case. On completion of as usual investigation of the case the accused Amit Newar @ Bishnu Newar was charge-sheeted for the offences U/S 366 IPC, R/W Sec.6 of POCSO Act to face trial.

- 3. On receipt of the charge sheet Special (POCSO) case No. 26/2019 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. On careful analysis of the materials on record a prima-facie case was made out to frame charge against the accused Amit Newar @ Bishnu Newar U/S 366 IPC/ 6 of POCSO Act. Whereupon formal charges under the said Sections of law 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 be tried.
- 5. In order to bring home the charges, the prosecution examined four vital witnesses viz the informant, victim, father of the victim and the medical officer of the case.
- 6. After examining those witnesses learned P.P. for the State submitted a petition to close the prosecution case as they could not disclose any implicating evidence against the accused and examination of the remaining witnesses would be a futile exercise and, therefore, prayed to close the prosecution evidence.
- 7. In the context of the above petition of the learned P.P. for the State, I had also carefully gone through the entire materials on the record. Having found that the vital witness victim failed to adduce incriminating evidence and, therefore, the petition was allowed and the prosecution case stood closed as further proceeding would not improve the prosecution case. Situated thus, the examination of the accused U/S 313 Cr.P.C. was dispensed with due to lack of incriminating materials to put before him seeking his answer.
- 8. Situated thus, the points for determinations in the present case are set up and framed as:-

- (1) Whether the accused on 22.1.2018 at village Kukurakata under Tangla PS. kidnapped the victim, with intent that she may be compelled or knowing it to be likely that she would be compelled to marry against her will or that she may be forced or seduced to illicit intercourse with the accused as alleged U/S 366 IPC?
- (2) Whether the accused on the same day, time and place 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, Dr. Bimal Ch. Boro is the Medical and Health Officer, who examined the victim medically. His evidence discloses that on 26.1.2018, he was serving as M. & H.O. at Udalguri Civil Hospital. On that day, he examined victim in reference to Tangla P.S. case No.13/2018 U/S 366 IPC. On examination, he found the following:-

# Physical examination:-

Height- 161 cm, weight- 43 Kg, teeth- 28 Nos., axillary hair- present, pubic hair- present, breast- developed, hymen- absent, vaginal injury- Nil, clothing-Navy blue pant, blue sallowar.

No spermatozoa seen on smear examination.

#### RADIOLOGICAL EXAMINATION:-

X-ray examination of the right wrist, elbow and iliac crest vide plate No.968 dated 29.1.2018 reported by Radiologist Radhika X-Ray, Mangaldai shows radiological age 16 to 17 years.

Urine for pregnancy test on 29.1.2018 reported by doctor of Mangaldai Civil Hospital, Mangaldai shows negative .

Ultrasonography of abdomen on 29.1.2018 by Sinologist, Dr. A. Deka reported as reveals normal echo feature of organ image.

The doctor opined that-

- 1. No spermatozoa seen in the slide.
- 2. Urine for pregnancy test is negative.
- 3. USG whole abdomen reveals normal.
- 4. Approximate age 16 to 17 years.

Ext.1 is his report. Ext.1(1) is his signature.

- 11. In his cross-examination, he stated that he did not find any violence mark in the private part of the victim.
- 12. PW2 is the victim. She adduced her evidence disclosing unequivocally that since before the incident she developed love relation with the accused while she was studying at class X at Aronodoy Academy, Tangla. On 22.1.2018 due to love affairs she on her own accord came out from her house to accompany the accused to another place without informing her parents. Thereafter, she stayed with the accused for two days at Guwahati. When her parents did not find her whereabouts her mother lodged the FIR. Later, she alongwith the accused voluntarily surrendered before the Tangla PS. When she was staying with the accused no sexual assault was committed with her. As she was a major girl, so due to love affairs towards the accused, she eloped away with him. Her statement was recorded U/S 164 Cr.P.C. before the Magistrate. In her statement also she narrated that she eloped away with the accused on her own sweet will due to love affairs. The accused did not force her to live with him. Ext.2 is her statement U/S 164 Cr.P.C. Ext.2(1) and 2(2) are her signatures. Her statement marked as Ext. 2 on scrutiny also reveals that she eloped with the accused on her own volition and she was a major girl at the time of occurrence.

- 13. In cross-examination, she has stated that the accused did not force her to go alongwith him. As she had grown love affairs towards the accused so she eloped away with him.
- 14. PW3, Smti. Malati Boro is the first informant of the case. She has deposed that the victim is her daughter. The accused off and on used to come to their home. On the day of occurrence she did not find her daughter in the house. Her daughter did not return till late in the night. In this regard she lodged an FIR. After lodgment of the FIR her daughter alongwith the accused surrendered before the Tangla PS. On being asked her daughter told her that she had love affair with the accused and, as such, she voluntarily eloped with the accused. Then only she came to know that her daughter at her own sweet will left home to join hands with the accused. Now her daughter is willing to pursue her study and she will be with her. Ext.3 is the FIR and Ext.3(1) is her signature.
- 15. In cross-examination, this witness stated that she did not see the accused taking away her daughter when she was found missing. From her daughter she came to know that she voluntarily went to meet the accused.
- 16. PW4, Bapan Ch. Boro, who is father of the victim, deposed in the same tune as PW3 (informant) stating that about one year ago after returning from his shop in the evening he came from his wife that his daughter was found missing from home. They searched for her whereabouts but she remained traceless. After lodgment of the FIR his daughter came to know about it and, as such, she surrendered alongwith the accused at Tangla PS. on being asked his daughter narrated that she on her own volition eloped with the accused. She also told that accused did not commit sexual assault on her. His daughter was around 18 years at the time of occurrence.
- 17. In cross-examination, he has reiterated that his daughter on her own accord eloped with the accused.

- 18. In view of the foregoing discussion of the evidence on record, it is quiet patent that there is no vestige of incriminating evidence to support the charges levelled against the accused as the victim being a major girl eloped with the accused on her own volition. That being the evidence, none of the charges levelled against the accused has been proved.
- 19. Resultantly, I am constrained to hold that the accused Amit Newar @ Bishnu Newar is not guilty U/S 366 IPC/ 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 20<sup>th</sup> day of November,2019.

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

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

## APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Bimal Ch. Boroii)PW2 Miss Sneha Boroiii)PW3 Smti. Malati Boroiv)PW4 Sri Bapan Ch. Boro

B)Defence witness: Nil.

## C)Exhibits:

i)Ext.1 Medical report.

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

iii)Ext.3 FIR.

Dictated and corrected by me.

Special Judge, Udalguri