CAUSE TITLE POCSO Case No. 42/16

Informant: Smti. Nilakanta Chutia,

W/o- Sri Nilakanta Chutia,

R/o- Phatikachua,

PS- Moran,

District- Dibrugarh.

Accused: Sri Ranjit Bora,

S/o- Sri Budheswar Bora,

R/o- Majgaon, PS- Khowang, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Mr. NB Shah, learned Legal Aid Counsel.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> PCSO Case No. 42/16 G.R. Case No. 1090/16

> > State of Assam

-Vs-

Sri Ranjit Bora

Charges: Under Section 366 IPC & Section 6 r/w Section 5(I) POCSO Act.

Date of evidence on : 31-08-16, 01-10-16 & 17-01-17.

Date of argument : 17-01-17. Date of Judgment : 09-02-17.

JUDGMENT

- 1) The brief account of this case is that on 21-03-16, the minor victim X eloped with Sri Ranjit Bora (hereinafter the accused) who was already married at that time. After a frantic search the victim's mother learnt that her daughter was confined by the accused in a rented house at Kiran Nagar in Moran.
- 2) An ejahar regarding this incident was lodged by the mother of the victim Smti. Rumi Chutia (hereinafter the complainant). The police registered Moran Police Station Case No. 94/16 under Section 366-A of the Indian Penal Code (IPC in short) and SI Pratap Borgohain was entrusted with the investigation.
- 3) The Investigating Officer (IO in short) embarked upon the investigation. He went to the place of occurrence and prepared the Sketch-Map. He recovered the victim and forwarded her for medical examination and for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short) and finding prima facie materials against the accused, the IO submitted the Charge-Sheet under Section 366-A IPC.
- 4) On appearance of the accused, copies were furnished and as the case was triable by the Sessions Judge, the case was committed to this Court vide order dtd. 04-06-16 passed by the learned Judicial Magistrate, 1st Class, Dibrugarh in connection with GR Case No. 1090/16. Subsequently, the case was transferred to the Court of the learned Asstt. Sessions Judge, Dibrugarh.

During trial, the case was transferred by the learned Asstt. Sessions Judge, Dibrugarh to this Court after perusal of the statement of the victim under Section 164 CrPC observing that as the victim is a minor, the accused ought to be booked under the Protection of Children from Sexual Offences Act (PCSO Act in short).

- 5) My learned predecessor was pleased to add charge under Section 6 read with Section 5 (I) of the PCSO Act. The accused abjured his guilt and claimed innocence.
- 6) To substantiate the stance, the prosecution adduced the evidence of eight witnesses including the IO whereas the defence confined itself to extensive cross-examination of the witnesses. The Medical Officer, PW-2, PW-3 and PW-5 were not cross-examined extensively.

SUBMISSIONS

- 7) Learned Public Prosecutor Smti. R. Devi submitted that the accused deserves to be punished as he cheated the victim by posing himself as an unmarried man. On the contrary, the learned defence counsel submitted that this case is bereft of any incriminating materials against the accused and the accused ought to get the benefit of doubt.
- 8) On the circumstances arising against him, the accused person answered that the victim was his wife's friend and she willingly went to his house on her own volition. He also stated that a false case was foisted against him with false allegations.
- 9) To decide the case in its right perspective, the following points are apposite for determination.
 - 1. Whether the accused kidnapped the minor X in order that she may be forced to illicit intercourse or in order to compel her to marry any person against her will?
 - 2. Whether at the same time and place, the accused committed aggravated penetrative sexual assault upon the minor X?

DECISION THEREON AND THE REASONS FOR THE DECISION

- 10) In order to decide the case in its right perspective, it is necessary to advert to the evidence on record.
- 11) The victim X testified as PW-4 that on 21-03-16, at about 11:30 am, while she was returning from her maternal uncle's house, she met the accused who requested her to go with him. She refused to go with the accused person, but

he forcefully took her in a 'Traveler' vehicle to his house. She met his parents, brothers and sisters. After staying in the house for two days, he applied vermillion on her forehead and accepted her as his wife. She further testified that she stayed with the accused as husband and wife. Later on, she learnt from the villagers that the accused was already married and he sent his wife to his in-law's house. At that time, she tried to return to her parent's house, but the accused prevented her from going out of his house. The accused took her to a rented house and kept her there. The villagers who saw her in his house, informed her mother and thereafter, police recovered her from the rented house along with the accused person and took her to the police station. Police recorded her statement and she was forwarded to the Magistrate to record her statement. Ext. 2 is her statement before the Magistrate and Ext. 2(1) and 2(2) are her signatures. She was forwarded for medical examination. She met the accused person's wife in the police station. Police took her and the accused to the police station.

12) The statement of the victim does not at all inspire confidence. The victim is a minor, but her evidence clearly depicts that she was a consenting party. The accused cannot be held guilty even though the victim is a minor, because, the victim's statement clearly depicts the veracity of her evidence. Her statement clearly depicts that she stayed with the accused person and his family members for two days. Moreover, she stated that she was forcibly taken in a 'Traveler' vehicle which is a public vehicle. It is not possible for a lad as young as the accused to forcefully take a victim of Class-X in a 'Traveler' vehicle forcibly because there were other passengers in the 'Traveler' vehicle. Moreover she admitted in her cross-examination that when the accused kept her in a rented house in Moran, she used to stay alone in the house and the accused used to go for work. It she was forcefully confined inside the rented house, she would have tried to escape. There is no hint in the evidence, whether she tried to escape from the rented house in Moran. There is also no hint in her evidence whether the accused forcefully applied vermillion on her head without her consent. It is mandated under Section 29 of the Protection of Children From Sexual Offices Act, 2012 (hereinafter POCSO Act) that:- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 & 9 of this Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved. In my foregoing discussions, it has already been held that the contrary has been proved. The question of presumption that the accused has committed this act, does not arise at all, because the evidence of the victim does not inspire confidence. The evidence of the victim as well as her mother cannot be given credence. Moreover, it is very strange that the victim's mother lodged the ejahar after a month. According to the victim's evidence and the ejahar, it is clear that the victim disappeared on 21-03-16, but the ejahar was lodged on 28-04-16.

- 13) The victim's mother Smti. Rumi Chutia testified as PW-1 that on 21st April, 2016, she came to know from her brother that her daughter X was returning from his house, but she did not reach home till evening. Then they set out to search for her daughter, but could not trace her out. After a frantic search, on 24-04-16, she came to know from a villager that her daughter was staying in a rented house let out by Sri Ranjit Bora at Kiran Path of Natun Nagar under Moran Police Station. Then on 28-04-16, she went to the Moran Police Station and lodged the ejahar which was written by a neighbour. Ext. 1 is the ejahar and Ext. 1(1) is her signature. She accompanied the police and showed them the area where her daughter was residing with the accused in a rented house. Then she went with the police to Ranjit Bora's rented house and met her daughter with the accused and his wife.
- 14) At this juncture, it is pertinent to note that the victim PW-4 testified that she met the accused person's first wife in the police station, while her mother testified as PW-1 that the victim X was already staying with the accused along with his first wife in a rented house. This casts a shadow of doubt over the veracity of the evidence of PW-1 as well as PW-4.
- 15) PW-4 further testified that the police took both the accused and her daughter to the Moran Police Station and when she asked her daughter about the occurrence, X told her that she was taken by the accused in a vehicle while she was returning from her maternal uncle's house to their own house. The police forwarded her daughter to Assam Medical College & Hospital, Dibrugarh for medical examination and to the Magistrate for recording her statement. During investigation, she submitted a Birth Certificate regarding the victim's age.
- 16) The evidence of PW-1 & 4 does not at all inspire confidence. Moreover, the evidence of other witnesses also does not implicate that the accused is

complicit.

- 17) Sri Nilakanta Chutia testified as PW-2 that the victim is his daughter who was fifteen years at the time of incident. The incident took place after the Bohag Bihu of 2016. On the day of the incident, his daughter was returning from her uncle's house, but she did not return home till evening and they also could not find her. After 4-5 days, his wife Smti. Rumi Chutia learnt from the villagers that his daughter was staying in a rented house with the accused person at Moran Natun Nagar. Then his wife informed the police and police recovered her from the rented house with the accused person. Then he went to the Moran Police Station and met his daughter who told him that while she was returning home from her uncle's house, the accused took her and kept her in a rented house.
- 18) His evidence depicts that the accused took his daughter to his house. This act of the accused cannot be accepted as criminal act. The victim's evidence clearly depicts that the accused was known to her. The victim's father's evidence depicts in a casual manner that the accused took his daughter to his house.
- 19) Another witness Smti. Gitanjali Phukan testified as PW-5 that about four months ago (from 01-10-16), she heard from her neighbours that when X was proceeding towards her uncle's house, one boy took her with him. She heard that X is married to the boy.
- 20) This PW-5's evidence depicts another story. Her evidence depicts that the victim was taken by the accused while she was heading towards her house which is contrary to the evidence of other witnesses.
- 21) Another witness Sri Pulin Chutia testified as PW-7 that the incident took place about 9-10 months ago. The complainant informed her that her daughter was taken away by somebody. Then he advised her to inform the police. Police recovered the victim along with the accused person from a rented house at Natun Nagar, Moran where both the victim and the accused were living as husband and wife. He saw the victim whose present age is 14-15 years and was a student of Class-IX.
- 22) This evidence goes against the prosecution case, because PW-7 testified that the victim was living with the accused as husband and wife. Can the accused be held guilty for staying with a girl who has willingly agreed to be his wife? Can the accused be vested with the guilt of kidnapping a girl who has

- willingly gone with him because the girl is a minor? It is true that the girl is minor because the Medical Officer has opined that the victim was above fourteen years and below sixteen years. I believe the benefit of two years on the higher side should be given to the accused.
- 23) The medical officer Dr. Asrulina Deori testified as PW-6 that on 29-04-16, while she was working in the Department of Forensic Medicine, Assam Medical College & Hospital, Dibrugarh as Medical Officer, she examined the victim X in connection with this case and found the following:
 - (1) X-ray elbow joint (AP view)- Epiphyseal union completed;
 - (2) X-ray wrist joint (AP view)- Epiphyseal union not completed;
 - (3) X-ray of shoulder joint (AP view)- Epiphyseal union not completed;
 - (4) X-ray of pelvis (AP view) Iliac crest not united.
 - (S/D- Department of Radiology, AMCH, Dibrugarh.)
- 24) The doctor opined that on the basis of Radiological examination done on the victim X, her opinion is that X is above 14 years and below 16 years. Opinion regarding whether she was raped or not, whether there is any violation mark on her external and internal part of the body could not be given as the victim X refused medical examination. Ext. 3 is the Medico-legal Report wherein Ext. 3(1) to Ext. 3(3) are her signatures. She placed her report before the Head of the Department, who concurred with her findings. Ext. 3(4) is the signature of Dr. RK Gogoi, Head of Forensic Medicine.
- 25) After considering the Medical Officer's evidence, I believe that the benefit of two years ought to be given to the accused. The victim is opined to be below sixteen years. The calculation of two years on either side has to be calculated on the higher side. Technicalities has to be avoided and a more pragmatic view has to be taken. I have considered the facts and circumstances of this case which clearly depicts the complete involvement of the victim in the act. The victim stayed with the accused person in hiding for several days. She was also privy to the fact that the accused was already married and she found the accused along with his wife. The accused himself is a young lad of only eighteen years. It can be easily deciphered that both the accused and the victim were around the same age and they have acted in a clandestine manner conjointly.
- 26) The IO is a formal witness and he testified as PW-8 that on 28-04-16, while he was posted as 2nd Officer at Moran Police Station, an ejahar was lodged by

Smti. Rumi Chutia and the Officer-in-charge registered a Moran Police Station Case No. 94/16 under Section 366-A IPC and entrusted him with the investigation. He embarked upon the investigation. Ext. 1 is the ejahar wherein Ext. 1(2) is the signature of the Officer-in-charge Dulal Chandra Mahanta which is familier to him. He recorded the statement of the complainant in the police station and proceeded to the place of occurrence and recorded the statements of the witnesses. He went to the rented house which was pointed out by the victim's mother and recovered the accused and the victim and brought them to the Moran Police Station. The statement of the victim was recorded and she was forwarded to the Magistrate for recording her statement. He arrested the accused and forwarded him to the Court. He seized a school certificate of Phatikachua ME School from the complainant. He obtained the Medico-legal Report of the victim. He finally submitted Charge-Sheet under Section 366-A IPC. Ext. 4 is the Charge-Sheet wherein Ext. 4(1) is his signature.

27) In my foregoing discussions, it has already been held that the accused cannot be fastened with the guilt of kidnapping the victim even though the victim appears to be minor. The victim herself was complicit in eloping with the accused on her own volition. Thereby it is held that the prosecution had failed to prove its case beyond reasonable doubt that the accused person induced the victim to go from her house with such an intention that she will be seduced to illicit intercourse. The evidence does not at all imply that the accused committed aggravated sexual intercourse with the victim. Thereby, the accused is acquitted from the charges under Section 366 IPC & Section 6 r/w Section 5(I) POCSO Act and set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 9th day of February, 2017.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 Smti. Rumi Chutia;
- 2. PW-2 Sri Nilakanta Chutia;
- 3. PW-3 Smti. Parineeta Chutia;
- 4. PW-4 Smti. Gitanjali Phukan;
- 5. PW-5 Dr. Asrulina Deori;
- 6. PW-6 Sri Pulin Chutia; and
- 7. PW-7 SI Pratap Borgohain.

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Medico-legal Report; and
- 4. Ext. 4 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.