CAUSE TITLE POCSO Case No. 40/16

Informant: The victim 'X'.

Accused: Sri Dinesh Majhi,

S/o- Sri Raju Majhi, R/o- Chandmarighat, PS- Dibrugarh, District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor. Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor. For the Defence: Smti. Anju S Gogoi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

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

Sessions Judge, Dibrugarh.

> POCSO Case No. 40/16 G.R. Case No. 907/16

> > State of Assam

-Vs-

Sri Dinesh Majhi

Charges: Under Section 4 of the POCSO Act.

Date of evidence on : 21-11-16, 02-01-17, 09-02-17 and 15-06-17.

Date of argument : 29-11-17. Date of Judgment : 10-01-18.

JUDGMENT

1) The prosecution case in a nutshell is that on 11-10-15, at about 5:00 pm, Sri Dinesh Majhi (hereinafter the accused person) forcefully kidnapped the victim X against her will from the road while she was proceeding towards Naliapool from her house. He confined X in a house at Lahoal and committed rape on her at night. Thereafter, he assured the victim that he will marry her and took her to Delhi and handed her over to a person whose name is not known to the victim. Thereafter, the accused returned to Dibrugarh and assured her that he will bring her back and he will accept her as is wife. On being so induced, the victim X stayed back at Delhi in the unknown person's house, but the accused did not return to Delhi to bring her back to Assam. When the victim expressed her desire to return to Assam, she was not allowed, because she was told that the accused had taken money from the unknown person in exchange of the victim. Finally, the victim managed to escape and informed her father over phone and her father went to bring her back to Dibrugarh on 06-04-16. The victim learnt that the accused married another girl and is staying with her as husband and wife. An ejahar regarding this incident was lodged by X with the police at Gabharupather Outpost and a GD Entry No. 168/16 was registered and the ejahar was forwarded to the Dibrugarh Police Station which was registered as Dibrugarh PS Case No. 271/16 under

- Sections 366-A/344/376 of the Indian Penal Code (IPC in short).
- 2) The investigating officer (IO in short) embarked upon the investigation. He forwarded the victim to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (CrPC in short) and to the medical officer (MO in short) for examination. He went to the place of occurrence and prepared Sketch-Map and recorded the statements of the witnesses. On finding prima facie materials, Charge-Sheet was laid against the accused under Sections 366-A/376 IPC read with Section 5 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short).
- 3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 366 IPC read with Section 4 of the POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of six witnesses including the MO and the IO and the defence cross-examined the witnesses in extenso to refute the charges. The prosecution also exhibited several documents.
- 5) I have heard the submission of both the sides. The learned Public Prosecutor Smti. Runumi Devi and learned Addl. Public Prosecutor Smti. Sehnaz Akhtar submitted that this case has been proved beyond a reasonable doubt and the accused deserves stringent punishment. On the other hand, the learned defence counsel submitted that this case is replete with contradictions and the accused deserves acquittal.

POINTS FOR DETERMINATION:

- 6) On the backdrop of the rival contentions urged at the bar, the following points are apposite for proper decision of this case:
 - i. Whether the accused abducted the victim to go with him in order that she may be forced or seduced to illicit intercourse?
 - ii. Whether the accused committed penetrative sexual assault on the minor victim X?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 7) To decide the case in its right perspective, it is necessary to advert to the evidence.
- 8) The victim testified as PW-1 that at the time of the incident, she was a

resident in a place near Naina Cinema Hall. The accused is her first cousin being her aunt's (jethai) son. The alleged incident took place about three months back. At the time of the incident, her parents went to Delhi and she was staying with her grandmother near Naina Cinema Hall. One day, the accused took her from her grandmother's house to Lahoal and kept her in a house belonging to a lady who is not known to her. The accused introduced her as his wife and he left her with the lady. She stayed in the lady's house for four days and during her stay, she used to attend the household chores of the lady. After about four days, the lady whom she addressed as 'Aunty' was informed by a person named Kamal that she eloped with the accused. When the lady came to know about her conduct, she drove her out of her house. Then she called the accused over phone and informed him that she was driven out of the lady's house. The accused then asked her to proceed to the Tinsukia Railway Station and accordingly, she went to the railway station. The accused then took her to Hijuguri where his father used to work as a painter in a Marwari person's house. She stayed in the Marwari person's house for about nine days and attended all the household chores. Then the accused came to the Marwari person's house and took her to the aunt's house wherefrom both of them left for Delhi. She and the accused went to Delhi and the accused kept her in the house of the aunt's daughter at Ramesh Nagar in Delhi. She stayed in aunt's daughter's house for six months while the accused stayed there for nine days and returned to Assam. The aunt at Lahoal informed her daughter that she (X) was the accused person's wife and accordingly, she stayed in the house at Delhi as husband and wife with the accused. She also had physical relationship with the accused. The accused returned to Dibrugarh from Delhi leaving her in the same house. The accused brought along with him another girl from the same house at Delhi, i.e., the house of the aunt's daughter. The girl who came from Delhi along with the accused person was from Chabua and the accused person married the girl from Chabua. The name of the said girl is Rina. She informed her employer, i.e., aunt's daughter that she intended to return to Dibrugarh. She called her grandmother over phone and informed her grandmother at Chabua that she wanted to return home. Then her grandmother sent her father to Delhi and the aunt's daughter allowed her to return home and she met her father in the railway station at Delhi. She went to Haryana along with her father and

stayed in a rented house along with her parents. After one month, she came to Dibrugarh with her father and went to her grandmother's house near the Naina Cinema Hall. After returning home, her grandmother advised her to lodge a case against the accused as he cheated her on several occasions. Her mother narrated the incident to a person who wrote the FIR and she affixed her signature. Ext. 1 is the FIR and Ext. 1(1) is her signature. The police recorded her statement. She was taken to Assam Medical College & Hospital, Dibrugarh for medical examination and she was also forwarded to the Magistrate for recording her statement. Ext. 2 is her statement and Ext. 2(1) upto Ext. 2(3) are her signatures.

- 9) In her cross-examination, she admitted that her marriage was solemnized with another person before this incident. Her first husband was from Bihar and she stayed with her husband at Dibrugarh for four months. Her first husband Sri Dinesh Kamal took her to Bihar and she stayed there with her inlaws and thereafter, her husband went away to Arab. She stayed in Bihar with her in-laws for about 1 ½ years. At that time, she was only thirteen years and she spent two years altogether with the family of her first husband. Due to some problems at Bihar, her parents brought her back to Assam with the consent of her in-laws. At present, she has no relationship with her in-laws and her first husband, because they learnt that she eloped with the accused. During the entire incident, the accused never compelled her or threatened her under any circumstances. A person named Kamal helped her to elope. She did not inform anyone about the incident.
- 10) The evidence of PW-1 does not inspire confidence. Although she has alleged of being induced by the accused in her FIR, yet in her evidence, she did not implicate that the accused cheated her and abducted her and took her to Lahoal, Delhi or any other place. There is no instance of any marriage being performed between the accused and the victim. When the accused introduced her as his wife, there was no resistance from her and she too conned with the accused as his wife. She willingly had physical relationship with the accused in the house at Delhi. She was not held captive, because when she expressed her desire to return home, her mistress allowed her to return home and her father brought her back. She was driven out of aunt's house at Lahoal when the said aunt came to know that she eloped with the accused. The evidence clearly depicts that the witness concealed some facts

and her evidence insinuates that she willingly eloped with the accused and stayed at places like Lahoal, Tinsukia, Delhi and so on and so forth. Her evidence also depicts that she was earlier married with another person and when she returned home, she eloped for a second time with the present accused. It appears that the victim was enamoured by the accused and when the accused got married with the girl named Rina, she was offended and she returned from Delhi to her parent's house after staying in Haryana for one month.

- 11) The victim's father Sri Gopal Rai testified as PW-2 that the accused is the son of his wife's elder sister. About eight months ago, he along with his wife went to Delhi and stayed at Haryana. At that time, he learnt from his mother-in-law that his daughter X who was staying at Naliapool with her was missing. After three months, he came to know from his mother-in-law that X informed her from Delhi that she was in Delhi and was in a fix and she intended to return to Dibrugarh. Then he returned from Delhi to Dibrugarh to meet his motherin-law and he also had a discussion with his daughter X. His daughter informed him that she was taken by the accused from Dibrugarh to Delhi and kept in the house of a lady for attending her household chores. X also informed him that the accused used to take payment from the lady at Delhi on his behalf. PW-2 further stated that he went to Delhi and he asked X to meet him at the railway station and accordingly, X came and met him at the railway station in Delhi and the he brought her back to Dibrugarh. When he asked his daughter about the incident, she informed him that the accused took her from her grandmother's house and promised to marry her later on and then took her to Delhi, but the accused married another girl. Then his daughter lodged an ejahar with the police.
- 12) In his cross-examination, he stated that his daughter was married for two years to another person named Sri Dinesh Kamal at the age of fourteen years. He brought her back from Dinesh Kamal's house promising them after completion of five years, Dinesh Kamal could take back his daughter to his own house, but after two months, his daughter eloped with the accused.
- 13) It is true that the victim indeed eloped with the accused and the accused may have promised to marry her, but the evidence of PW-2 does not inspire confidence that she was induced by the accused with false promises of marriage.

- 14) The victim's grandmother Smti. Mina Prasad testified as PW-3 that the accused is her grandson. The victim's present age is sixteen years. Her parents used to reside in Delhi and so the victim used to stay with her. About seven months back, the victim went out to the bazaar and did not return. Then she registered a missing entry. After three years, the victim called her over phone that she eloped with the accused and that she was fine and it was not necessary to search for her. Again after five months, the victim called her from Delhi and informed that the accused abandoned her in a house at Delhi and he returned to Dibrugarh and did not contact her. The victim X called the accused over phone several times, but the accused did not respond. Then she informed her son and daughter-in-law about the victim's condition and they went to Delhi and brought her back from Delhi to Dibrugarh. The victim informed her that she wanted to lodge a case against the accused, as he abandoned her at Delhi and returned to Dibrugarh with another girl and married the girl. Accordingly, she lodged an FIR.
- 15) In her cross-examination, PW-3 testified that when the accused eloped with the accused person, she was already a married woman and she was married to a person from Bihar and she was not a divorcee. Thus, the evidence of PW-3 affirms that the victim who was a married woman, eloped with another person. PW-3's evidence does not implicate any inducement from the accused person's side. Rather, PW-1's cross-examination depicts that there was no compulsion or threats from the accused person to the victim.
- 16) Smti. Kuldip Kaur testified that both the accused and the victim X are known to her. The incident took place about a year back. At the time of the incident, the accused and the victim came to her house and they both stated that they have entered into marriage and they were desirous to stay in her servant quarter. She allowed them to stay there for a day or two. The accused was an old acquaintance and he informed her that he will stay in her daughter's rented house, but she discouraged them to stay in her daughter's house. Later, she learnt from her daughter who informed her over phone that the accused and X went to her house in Delhi and stayed in her rented house. She then discouraged her daughter from allowing them to stay in her rented house. Later the victim X returned from Delhi and lodged this case.
- 17) Thus, it is clear from the evidence of PW-5 that as X and the accused were not allowed to stay in PW-5's daughter's rented house in Delhi, she returned

from Delhi to Dibrugarh. It is true that there is evidence that X was below

sixteen years at the time of the incident.

18) Dr. Nibedita Shyam opined as PW-4 that the victim was above fourteen years

and below sixteen years as on 11-04-16. On examination of the victim, no

injuries were detected on her private parts and she had signs of earlier sexual

intercourse. The accused gets the benefit, because the victim's age is taken

to be two years on the higher side which renders her age to be around

eighteen years.

19) In view of my foregoing discussions, it is thereby held that the prosecution

failed to prove beyond reasonable doubt that the accused induced the victim

X to go with him and thereby abducted her and forced her or seduced her to

illicit intercourse or sold her as domestic help. There is no evidence of sexual

assault upon the victim X. Thereby, the accused Sri Dinesh Majhi is acquitted

from the charges under Section 366 IPC read with Section 4 of the POCSO

act and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 10^{th} day of

January, 2018.

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 The victim 'X';
- 2. PW-2 Sri Gopal Rai;
- 3. PW-3 Smti. Mina Prasad;
- 4. PW-4 Dr. Nibedita Shyam;
- 5. PW-5 Smti. Kuldip Kaur; and
- 6. PW-6 SI Bisadu Singh Pho.

List of Exhibits:

- 1. Ext. 1 FIR;
- 2. Ext. 2 Statement of the victim recorded under Section 164 CrPC;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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