IN THE COURT OF SPECIAL JUDGE: LAKHIMPUR: AT NORTH LAKHIMPUR.

PRESENT -M.A.Choudhury,

Special Judge,

Lakhimpur, North Lakhimpur.

SPECIAL CASE NO.79/2018.

Under Section – 366(A) IPC and U/s 4 of the POCSO Act.

PARTIES

State of Assam. ... Complainant.

-versus-

Sri Babu Baruah. ... Accused.

ADVOCATES APPEARED IN THE CASE:

Mr. Madhab Gogoi, Special Public Prosecutor. ... For the State of Assam.

Mrs. Piju Baruah, Advocate. ... For the Accused.

Date of framing of charge. :22.06.2018.

Date of taking evidence. :30.07.2018 and 06.08.2018

Date of hearing Argument. :06.08.2018.

Date of delivery of Judgment. :06.08.2018.

JUDGMENT

1. The case of the prosecution may in brief describe thus:

On 19.02.2018, the informant, Sri Doley Deori lodged an ejahar with Narayanpur Police Station to the effect that the victim X is his minor daughter aged about 17 years. On 18.02.2018 at about 8.30 pm, the accused, Sri Babu Baruah kidnapped his minor daughter victim X, aged about 17 years from his house as there was love affairs between them. The accused, Sri Babu Baruah after kidnapping the victim X could not take her into his house and kept her in an unknown place.

- 2. On receiving the ejahar, the Officer-in-charge of Narayanpur P.S. registered a case vide Narayanpur P.S. Case No.42/2018 under Section 366 IPC and handed over the charge of investigation of the case to SI Padmadhar Buragohain.
- 3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared sketch map of the place of occurrence. In course of investigation, the I.O. got recorded the statement of the victim X u/s 164 CrPC. The I.O got the victim X examined by a doctor of North Lakhimpur Civil Hospital. The I.O recorded the statement of the witnesses u/s 161 CrPC. Thereafter, the I.O arrested the accused, Sri Babu Baruah and forwarded him before the court. After completion of the investigation of the case, the I.O. found sufficient incriminating materials against the accused, Sri Babu Baruah under Section 366 IPC and under Section 4 of the POCSO Act. Accordingly, the I.O. submitted the charge-sheet against the accused, Sri Babu Baruah u/s 366 IPC and u/s 4 of the POCSO Act.
- 4. The accused, Sri Babu Baruah made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, sufficient materials under Section 366(A) IPC and under Section 4 of the POCSO Act have been found against the accused person in the case record. Accordingly, charges under Section 366(A) IPC and under Section 4 of the POCSO Act were framed against the accused, Sri Babu Baruah. The charges were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 5. In course of trial, the prosecution side examined 5 (five) witnesses.
- 6. The recording of the statement of the accused person under Section 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the accused person in their evidence regarding commission of any offence.
 - 7. The accused person led no evidence in his defence.

- 8. Heard Argument from the learned advocates of both
- 9. Perused the case record and the evidence adduced by the prosecution side in the case very carefully.
 - 10. The points for determination in this case are :
- (I) Whether the accused, Sri Babu Baruah on 18.02.2018 at 8.30 pm at village Borchapari under Narayanpur Police Station kidnapped the victim X, a minor girl below the age of 18 years to go from her house along with him with intent that she might be or knowing that it was likely that she would be forced or seduced to illicit intercourse with him?
- (II) Whether the accused person after kidnapping the victim X, a minor girl committed penetrative sexual assault upon her person?

11. DECISION AND REASONS

The prosecution side examined 5 (five) witnesses. PW.1 is the victim X of the case. PW.2 is Sri Doley Deori, who is the father of the victim X. PW.3, Smti Sontara Deori is the mother of the victim X. PW.4, Sri Biseswar Deori is the uncle of the victim X. PW.5, Sri Bidya Deori is the cousin of the victim X.

PW.1, the victim X stated, in her evidence, that she knows the accused, Sri Babu Baruah, whose house is situated about 2 km away from her house. She, in her evidence, stated that about four months back at day time she went to Tenga Pathar in the house of one Smti Manisha Deori without informing anyone of her house. She, in her evidence, also stated that when she had not come back to her house on that day, then her father, Sri Doley Deori lodged an ejahar with the Police Station. She also stated that she had not eloped with the accused, Sri Babu Baruah. She further stated that the accused had not performed any sexual intercourse with her. She, in her evidence, further stated that her father lodged the ejahar on misconception.

This is the evidence adduced by PW.1, the victim X. On careful scrutiny of the evidence of PW.1, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

PW.2, Sri Doley Deori, in his evidence, stated that the victim X is his daughter. He knows the accused, Sri Babu Baruah, whose house is situated little away from his house in the same village. He, in his evidence, also stated that about four months back on a day, his daughter, the victim X without informing in the house had gone to the house of her friend, Manisha Deori in the village of Tenga Pathar. As she had not returned back on that day, he lodged the ejahar with the Police Station on misconception against the accused person. He also stated that thereafter, his daughter came back to her house.

This is the evidence adduced by PW.2, the informant of the case. On careful scrutiny of the evidence adduced by the informant (PW.2), I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.3, Smti Sontara Deori is the mother of the victim X. She, in her evidence, stated that she did not know the accused, Sri Babu Baruah and she has seen the accused today only. She, in her evidence, also stated that about four months back in a day, her daughter, victim X had gone to visit the house of her friend, Manisha Deori at village, Tengapathar without informing in the house. She further stated that as her daughter made delay in returning back into the house, her husband (PW.2) lodged the ejahar with the Police Station on misconception. She, in her evidence, stated that the accused had not kidnapped her daughter. She further stated that the accused had not done any bad act with her daughter.

This is the evidence adduced by PW.3, the mother of the victim X. On careful scrutiny of the evidence adduced by the PW.3, I do not find any incriminating material in her evidence against the accused person regarding commission of any offence.

PW.4, Sri Biseswar Deori, in his evidence, stated that the victim is his niece. He stated that he did not know the accused, Sri Babu Baruah. He also stated that he has been living in the same homestead with his elder brother, Sri Doley Deori, who is the father of the victim X. He, in his evidence, also stated that about four months back the victim X without informing in her house had gone to visit the house of her friend, Manisha Deori at village, Tengapathar. He further stated that as the victim X had not returned back to her house on that day, so his brother, Sri Doley Deori lodged the ejahar with the Police Station. Thereafter, the victim X came back into the house. He, in his evidence, further stated that the case has been lodged against the accused person by his elder brother on misconception.

This is the evidence adduced by PW.4. On careful scrutiny of the evidence adduced by the PW.4, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

PW.5, Sri Bidya Deori, in his evidence, stated that he did not know the accused person, who had been present in the court and also his whereabouts. He also stated that the victim X is his first cousin. He further stated that he did not know anything regarding the occurrence of the case. At the time of occurrence, he was at Itanagar as he has been serving as an employee in a private firm at Itanagar. He, in his evidence, also stated that he did not know what had happened with the victim X.

This is the evidence adduced by PW.5. On careful scrutiny of the evidence adduced by the PW.5, I do not find any incriminating material in his evidence against the accused person regarding commission of any offence.

12. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Section 366(A) IPC and under Section 4 of the POCSO Act brought against the accused person, Sri Babu Baruah and the accused person deserves to be acquitted.

13. I, therefore, hold the accused person, Sri Babu Baruah not guilty and acquit him from the charges under Section 366(A) IPC and under Section 4 of the POCSO Act.

14. The accused person be released forthwith from the judicial custody.

 $\label{eq:theorem} 15. \mbox{ Given under my hand and the seal of this court on this } \\ the \mbox{ 6^{th} day of August, 2018.}$

(M. A. Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury) Special Judge, Lakhimpur, North Lakhimpur.

Transcribed & typed by-Sri Satyabrata Kshattry, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE:

PW.1 – Victim X.

PW.2 – Sri Doley Deori.

PW.3 – Smti Sontara Deori.

PW.4 – Sri Biseswar Deori.

PW.5 – Sri Bidya Deori.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE:

Nil

3. DOCUMENTS PRODUCED IN THE CASE:

NIL

(M. A. Choudhury)
Special Judge,
Lakhimpur, North Lakhimpur.