IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 30(DH) 2017.

U/S 376 IPC R/W Sec. 4 of POCSO Act.

(G.R. Case No.890/2017 (DMJ), Dhemaji P.S. Case No.107/2018 Under Section 366(A) IPC.

The State of Assam

- Versus -

Shri Biplab Gogoi @ Akonmani

.....Accused Person

S/O Deben Gogoi,

R/O Moridhal Borphukan Gaon,

P.S. Dhemaji,

Dist.- Dhemaji.

Special Judge, Dhemaji.

14-8-2018

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri H. Chetia, Advocate

.....For the Accused

Date of prosecution evidence

: 31-7-2018

Date of defence evidence

: Nil.

Date of argument

: 31-07-2018

Date of Judgment

: 14-08-2018.

JUDGMENT

- 1. The prosecution case in brief is that on 20-9-2017 complainant-Shri Diganta Changmai lodged an ejahar with Dhemaji Police Station alleging interalia that on19-9-2017 while his minor daughter Miss 'X' aged about 16 years, was returning home from her College, the accused-Biplab Gogoi took away his daughter.
- 2. On receipt of the ejahar police registered a case vide Dhemaji P.S. Case No.358/2017 u/s 366(A) of IPC. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Biplab Gogoi u/s 366(A)/376 of IPC read with Section 4 of POCSO Act.
- On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 366/376 of IPC read with Section- 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. On perusal of evidence of witnesses, it is seen that the witness did not implicate the accused as to the involvement in the alleged commission of offence. However, the accused was examined u/s 313 of Cr.P.C.

4. Point for determination:

(i) That you , on 19-9-2017 at about 12.30 PM at Village-Moridhal Borphukan under Dhemaji Police Station, kidnapped/ abducted Miss 'X', a minor girl aged about 16 years while she was

Special Judge, Dhamaji. returning home from her College with intent that she might be compelled to marry you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.

- (ii) That, on the same day, time and place you committed rape on Miss 'X' and thereby you committed an offence punishable u/s 376of IPC.
- (iii) That you, on the same day, time and place, you committed penetrative sexual assault on Miss 'X', a minor girl aged about 16 years, and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof:

6. **PW1** Miss 'X' is the victim. She has stated that she I knows the accused. The incident took place about 6 months back. The accused is well acquainted with her and she developed friendship with the accused and on the date of occurrence she accompanied accused and went to Boginadi and visited the house of accused's elder sister. They stayed there for one night. Her parents searched for her as she went out without knowledge and consent of her parents. Her father lodged complaint at the police station. When she came to know that her father lodged complaint, she informed him over phone that she came to Boginodi along with the accused. Her father came and brought her back home. Accused did not physically abuse her. Police recorded her statement and she also gave statement before Magistrate.

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In cross-examination PW1 stated that her father lodged compliant as she went out without his knowledge and permission. Later on when she told her father everything he realized that the case should not have been filed against accused. So her father is now not willing to proceed against the accused. She further stated that the accused has not in any way abused her.

7. **PW2** Diganta Changmai is the complainant and father of the victim. He knows the accused. The incident took place about 6 months back. At the time of occurrence his daughter was a student of HS 1st year. On the date of occurrence his daughter went missing and later on he came to know that in fact she along with accused went to Boginodi to visit accused's elder sister's house. They stayed there for a night. He was worried and he lodged complaint. On being asked his daughter told him that accused did not do any harm to her. Ext.1 is ejahar. Ext.1(1) is his signature .

In cross-examination PW2 stated that now he is not willing to proceed against the accused. Whatever statement of his daughter had earlier made it was result of their anger. He has nothing to say if the case ends in acquittal.

8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant were examined as PW-1 and PW2 respectively. In their evidence both the vital stated that on the date of occurrence the accused and the victim girl went to Boginodi to visit the house of accused's elder sister. Both victim and the accused stayed there at Boginodi for a night. Both the witnesses further stated that the accused did nothing to the victim. In cross examination PW2 stated that they are not willing to proceed against the accused. PW2 also stated that he has nothing to say if the case is ended in acquittal. From the evidence of both the vital witnesses (PW1 and PW2), it is seen that both the parties have compromised

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the case outside the court and hence, they are not willing to proceed against the accused.

- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences u/s 366/376 IPC R/W section 4 of POCSO Act. I find that the prosecution has totally failed to prove the charges u/s 366/376 IPC R/W section 4 of POCSO Act.
- 10. In view of the above, I find accused-**Biplab Gogoi** @ **Akomani** not guilty u/s 366/376 IPC R/W section 4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.
- 12. Given under my hand and seal of this Court on this the 14th day of August/2018.

(S. Das)
Specialuludge,