# IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

## SONITPUR, ASSAM

# Spl POCSO Case No. 60/2018

u/s 363 IPC/4 of POCSO Act, 2012

State of Assam

-vs-

Sri Babu Das

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Biswanath Chariali, Sonitpur.

### Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence

: Mr. P. Hazarika, learned Advocate.

Date of recording Evidence: 01.08.2019.

Date of Argument

: 01.08.2019.

Date of Judgment

: 01.08.2019.

#### JUDGMENT

- 1. The prosecution case in brief is that on 14.11.2018 the informant namely, Smti Bhanti Das lodged an FIR with the OC, Sootea PS stating inter alia that on 11.11.2018 at about 3 PM, taking advantage of absence of other inmates of their house, the accused kidnapped her 16-year-old daughter (name is withheld) on his motor-cycle.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet of the accused 365 IPC r/w 4 of the POCSO Act.
- 3. The accused in due course appeared before this court to face trial. The copies of the relevant documents were furnished to him. After hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as this court found grounds for presuming that the accused had committed offences u/s 363 IPC/ 4 of the POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.
- 4. During trial, the prosecution examined the informant and the alleged victim. Looking into their evidence of these two vital witnesses, the prosecution declined to examine the

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remaining witnesses contending that further evidence would not strengthen its case. Taking note of the evidence on record, more particularly, the evidence of the alleged victim, the prosecution evidence was closed. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

#### **Points for determination**

- i) Whether the accused on the day of the alleged occurrence kidnapped the said victim, who is a minor under the age of 18 years, from the lawful guardianship of the mother-the informant?
- ii) Whether the accused on the day of the said occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

# Discussion, Decision and Reasons thereof

- 5. PW 1 is the alleged victim. She stated that the accused is her husband. She had love affair with him and had therefore eloped with him. She stated that her mother out of misunderstanding lodged the ejahar. According to her, the incident took place about 7-8 months back and when they returned back, their family members got them married. She stated that the accused is innocent.
- 6. PW 2, Smti Bhanti Das is the informant and the mother of the alleged victim. She stated that as her daughter had gone missing about 7-8 months back, she out of fear lodged the ejahar, which she proved that Ext. 1. She stated that she had lodged the ejahar out of misunderstanding. According to her, later both the accused and the victim got married. She also stated that her daughter had gone with the accused on her own wish and she was about 20 years old at that relevant time.
- 7. Thus from the evidence of the these two vital witnesses as examined by the prosecution, we do not find any material against the accused on the offences charged against him. The prosecution has failed to proved its case. As such I acquit the accused from the offences charged against him and set him at liberty forthwith. His bail bond stands discharged. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 1st day of August, 2019.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

## **ANNEXURE**

Witnesses examined by the Prosecution:

PW1- Victim

PW2- Smti Bhanti Das

Exhibits proved by the prosecution witnesses:

Exhibit-1: Ejahar

Witnesses examined by the Defence:

None.

**Documents exhibited by the Defence:** 

None.

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