IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

POCSO Case No. 92/2019 U/S 366/376(2)(i) IPC r/w Section 4 of the POCSO Act.

State of Assam

-VS-

Sri Ritu Baghlary

S/o Late Subash Baghlary

R/o Village- Jengarbori, Amaraguri

P.S. – Laharighat

District – Morigaon, Assam. Accused

Date of Charge : 29.08.2019.

Date of Evidence : 05.03.2020.

Date of Argument : 05.03.2020.

Date of Judgment : 05.03.2020.

Appearance for the Parties

Advocate for the State : Mr. A. Kalam, Ld. Special Public Prosecutor.

Advocate for the Accused : Mr. U. C. Roy, Ld. Advocate.

J U D G M E N T

Prosecution case in brief is that on 13.03.2017, Smti. B. Boro lodged an FIR before the Laharighat Police Station alleging inter-alia that on 09.03.2017, at about 6:30 AM, while her minor daughter, the victim 'X' (name withheld) aged 14 years was going for tuition, the accused persons named in the FIR had forcefully kidnapped her from the road and kept her at their house.

- 2. On receipt of the FIR, Laharighat PS Case No. 98/2017 u/s 363(A)/34 IPC was registered and investigated into. During investigation, the victim was medically examined and statement of the victim was recorded u/s 164 Cr.P.C and on completion of investigation, the Investigating Officer (I/O) submitted charge sheet against the present accused Sri Ritu Baghlary for trial u/s 366/376 IPC. However, the other two FIR named accused persons namely, Sri Bhupesh Bormahela and Smti. Sabitri Baghlary were not sent up for trial due to lack of evidence against them.
- **3.** Upon submission of Charge-Sheet, vide order dated 31.10.2018 learned JMFC, Morigaon, by complying with the provision of Section 209 Cr.P.C. has committed the case, for trial before the Court of Sessions. During investigation accused was on bail.
- 4. On receipt of the case record on commitment, my learned predecessor in office has framed charges U/S 366/376(2)(i) IPC r/w Section 4 of the POCSO Act against the above named accused to which he pleaded not guilty.
- During trial, prosecution side has examined only two witnesses i.e. the informant and the victim. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. U. C. Roy, learned defence Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE:

- **7.** (I) What was the age of the victim on 09.03.2017?
 - (II) Whether on 09.03.2017, the accused has kidnapped/abducted the victim to his house? If yes, what was the intention of the accused?

(III) Whether on 09.03.2017 or thereafter, the victim 'X' was subjected to aggravated penetrative sexual assault/rape by the accused in his house?

DISCUSSION, DECISION AND REASONS THEREOF

8. PW-1, Smt. B Boro, the informant as well as the mother of the victim 'X' in her evidence deposed that at the time of incident, victim was aged about 15 years and was a student of class IX. She has forgotten the date of birth of her daughter. She stated that on 09.03.2017, till 5 PM, due to non return of her daughter Victim 'X' from her school, she consulted with her mother and went in search of her. During search, villager of accused, had informed her that accused Ritu took her daughter for performing marriage. On this, she went to the house of accused but did not find her in his house. After 3 days, her daughter was recovered by police. After recovery, she filed a written FIR at Laharighat PS. Exbt. 1(i) is her signature. After recovery her daughter told her that accused took her by force and keeps her at Kuhtuli. She did not complain of any misbehaviour with her by the accused. Presently, her daughter has got married to Madhab of Dewraguri. In her cross-examination by defence, she stated that she cannot say about the contents of the FIR and that she had simply put her signature in the FIR. She had not submitted any age proof document of her daughter to police or in court. She filed the FIR after recovery of the daughter. Due to busy in search, she did not file the FIR immediately. After recovery, police handed over her daughter to her. She remained with her for the night. She had no knowledge for love affairs between her daughter and accused. She lodged the FIR after talking to her daughter after her recovery. Before police she had not stated that her daughter told her that accused had forcibly taken her with him. She denied the suggestion that at the time of occurrence her daughter was aged above 18 years and as such she had withheld the age proof documents of her daughter. She had stated the age on assumption only. She had not visited Kuhtuli, where her daughter was kept for

three days. She has no objection in acquittal of the accused as they have compromised the matter.

9. PW-2, the victim 'X' in her evidence deposed that accused Ritu Baghlary is known to her few days prior to this case. At the time of incident she was aged about 15 years and was a student of class IX. She has forgotten her death of birth. On 09.03.2017, at 3 PM, while she was going to tuition from school, accused Ritu Baghlary came near to Jalakiyabari Panchayat Office and took her with him in the carrier of his bicycle. He took her to his sister's residence at Kushtali and kept her there for three days. In these three days, she slept with his sister. He did not misbehave her. After three days, accused brought her to his house. On going of her mother in search of her, accused kept her in other's neighbouring house. After keeping her there for one night, family members of accused brought her to Laharighat PS and handed over to police. She met her mother at police station. After recovery she did not tell her mother about the incident in detail. Police also took her for medical examination and brought to Court for recording her statement. She had given her statement in Court. Exbt. 2 is her statement. Exbt. 2(i) to 2(ii) are her signatures. In her cross-examination by defence, she stated that she had love affairs with accused Ritu for about three months prior to this incident. While taking her by the accused in bicycle, they come across several houses and also met few persons. During her stay at Kuhtuli, neighbouring peoples came there to meet her. She did not inform them about the incident. She went with the accused for visit. She did not make any hue and cry, during going with the accused in his bicycle. She cannot say her date of birth or the year of birth. She denied the suggestion that at the time of incident, she was aged above 18 years. While giving statement to police she stated that she had eloped with the accused and that she was not kidnapped by the accused. She went with the accused without informing her parents. Her mother filed the case on suspicion. She has no objection in acquittal of the accused as they have compromised the matter.

- So far age of the victim is concerned the victim and the informant claimed that at the time of incident, the victim was aged about 15 years. Though defence suggested that the victim was above the age of 18 years, but said suggestion was denied by the witnesses. In the medical examination report of the victim, the age of the victim was mentioned as 18-20 years. This opinion is based on x-ray report. Witnesses admitted that they deposed about age on assumption. Under these facts and circumstances, I hold that the victim was aged above 18 years.
- 11. So far the allegation of abduction and rape is concerned, from the evidence of the PW-2 the victim, it appears that she deposed nothing against the accused involving him with the alleged offence of abduction and committing rape upon her. The victim in her evidence-in-chief clearly stated that on 09.03.2017, while she was going to tuition from school, accused Ritu Baghlary came near to Jalakiyabari Panchayat Office and took her with him in the carrier of his bicycle. He took her to his sister's residence at Kushtali and kept her there for three days. In these three days, she slept with his sister. The accused did not misbehave her and after three days, accused brought her to his house. After keeping her there for one night, family members of accused brought her to Laharighat PS and handed over to police. In her cross examination, the victim admitted that she had love affairs with accused Ritu for about three months prior to this incident. While taking her by the accused in bicycle, they came across several houses and also met few persons and during her stay at Kuhtuli, neighbouring peoples came there to meet her but she did not inform them about the incident. She did not make any hue and cry, during going with the accused in his bicycle. She also admitted that while giving statement to police she stated that she had eloped with the accused and that she was not kidnapped by the accused. She went with the accused without informing her parents. Her mother filed the case on suspicion. The mother of the victim though stated that victim told her that accused took her by force, but this part of evidence was not supported by the victim herself.

- **12.** From the above evidence as discussed, it is clear that there was no material whatsoever regarding abduction or rape against the accused. The offence of commission of penetrative sexual assault by the accused is not attracted as victim was found major in age.
- **13.** Prosecution has failed to prove the ingredients of charge U/S 366/376(2)(i) IPC and Section 4 of the POCSO Act against the accused Ritu Baghlary. As such, accused Ritu Baghlary is acquitted from the charges U/S 366/376(2)(i) IPC and Section 4 of POCSO Act, 2012 and set at liberty forthwith.
- **14.** The bail bond executed by accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- **15.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **16.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **17.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 5th day of March, 2020 at Morigaon.

Special Judge, Morigaon, Assam