## IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

## JUDGMENT IN SPL.(POCSO) CASE NO. 10 (DH)/ 2018.

U/S 366 IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

Shri Papu Kalita

.....Accused Person

S/O Bhugeswar Kalita,

R/O Modarguri Kalita Gaon,

P.S. Dhemaji,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

**Public Prosecutor** 

.....For the State

Shri S. Milli, Advocate

.....For the Accused

**Date of prosecution evidence** : 12-11-2018

**Date of argument** 

: 12-11-2018

**Date of Judgment** 

: 16-11-2018.

16/11/2018

### JUDGMENT

- 1. The prosecution case, in brief, is that on 23-09-2017 complainant- Dimpul Sharma lodged an ejahar with Dhemaji Police Station alleging interalia that on that day i.e. on 23-09-2017 while his minor sister-Smti Ritika Sharma aged about 16 years was going to purchase some articles from a shop, the accused-Papu Kalita forcibly kidnapped/abducted his sister-Ritika Sharma from the road.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Papu Kalita u/s 366 of IPC R/W section 4 of the POCSO Act.
- 3. 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 charges u/s 366 IPC R/W Sec. 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. At the closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

#### 4. Point for determination:

(1) That, on 23-09-2017 at about 4 PM at Ward No.4, Dhemaji Chariali under Dhemaji Police Station, you kidnapped/abducted Smti Ritika Sarmah, a minor girl aged about 16 years from the road 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.

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- (2) That, on the same day, time and place and thereafter at different places you committed penetrative sexual assault on Smti Ritika Sharmas, 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** is the victim Smti Ritika Sharma. She stated that complainant is her elder brother. She knows the accused. The incident took place about one year ago. She had love affairs with the accused and she eloped with him. Her parents opposed to her affair with the accused and they intended to marry her off to the accused as per social rites. So, her elder brother lodged complaint against the accused. After filing of the complaint, police gave her in the zimma of her parents. Now, her parents agreed to give marriage the victim to the accused and accordingly necessary ceremonies of marriage have been performed. She and her parents are not willing to proceed in this case against the accused.

In her cross-examination PW1 stated that she prays that the accused may be acquitted in this case.

7. **PW2** Dimpul Sharma stated that the victim is his youngest sister. He is the complainant. He knows the accused. The incident took place about one year ago. His sister had love affairs with the accused and she eloped with him. His parents opposed to her affair with the accused and they intended to marry her off to the accused as per social rites. So, he lodged complaint against the accused. After filing of the complaint, police gave her in the zimma of her parents. Now, his parents agreed to give marriage the victim to the accused and accordingly necessary ceremonies of marriage have been performed. She has also attained majority, 18 years, and now they are

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not willing to proceed in this case against the accused. Ext-1 is the ejahar and EXt-1(1) is his signature.

In her cross-examination PW2 stated that he prays that the accused may be acquitted in this case.

# Appreciation of evidence:

- 8. From the discussion of the evidence on record, it appears that in this case the victim and the complainant-Dimpul Sharma were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the victim girl had love affairs with the accused and she (victim) eloped with the accused to get marry with him. But, parents of the victim were opposed to the marriage of the victim with the accused. So, PW2 (brother of the victim) lodged complaint against the accused. Now, parents of both PWs-1 and 2 agreed to marry the victim with the accused and accordingly necessary ceremonies of marriage have been performed. Now, the victim has attained majority, 18 years, and now the parents of the victim are not willing to proceed in this case against the accused. In cross-examination, both PW1 and PW2 pray that the accused may be acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.
- 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. This is a case of no evidence. In all probability both the parties have compromised the case outside the Court for which pws have not deposed against the accused. Be that as it may I find that the prosecution has totally failed to prove the charges u/s 366 of IPC read with Sec.- 4 of the POCSO Act against the accused.

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- 10. In view of the above, I find the accused-**Papu Kalita** not guilty u/s 366 of the I.P.C. read with Section-4 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the **16<sup>th</sup>** day of November/2018.

(S. Das)
Special Judge,
Dhemaji.