IN THE COURT OF THE SESSIONS JUDGE, AT DIBRUGARH ::

Present: Mrs. S.P. Khaund, Sessions Judge,

Dibrugarh.

PCSO Case No.1 of 2016

Under Section 366 A of IPC read with Section 4 of PSCO Act.

State

-Versus-

Md. Alam AliAccused person.

Appearance:

For the State : Smti. S. Akhtar, Ld. Addl. P.P.

For the accused : Sri Imtiaz Parvez Ld. Defence Counsel.

Date of evidence recorded: 20.05.17, 12.06.17,.

Date of argument heard : 12.06.17. Date of judgment : 12.06.17.

JUDGMENT

- 1. The prosecution case in brief is that on 5.2.15, a minor victim 'X' at about 10 a.m, proceeded towards Moran, but did not return. After a frantic search, the victim's father could not find her and lodged this case with the Police.
- 2. An ejahar was registered as Khowang P.S Case No.6/15, under Section 366 A of the Indian Penal Code(IPC in short) and investigation ensued.
- 3. The I.O embarked upon the investigation. He forwarded the victim for medical examination and to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (Cr.P.C in short). The I.O went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses.

- 4. On finding prima-facie materials he submitted charge-sheet against the accused under Section 366 A of the IPC read with Section 4 of Protection Of Children from Sexual Offences Act, 2012 (POSCO Act in short).
- 5. On appearance of the accused, copies were furnished as this case is triable by the Sessions Judge, Dibrugarh. The case was committed to this court vide order dated 22.12.15.
- 6. After hearing both the sides a formal charge under Section 366 of the IPC read with Section 4 of PCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed innocence.
- 6. To substantiate the stance, the prosecution adduced the evidence of two (2) witnesses. The statement of the accused was recorded.
- 7. I have heard the arguments forwarded by the Learned Counsel for both the sides.

8. **Points for determination**

- (i) Whether on 5.2.17, the accused induced the victim 'X' to go with him with an intent that she may be forced to illicit intercourse?
- (ii) Whether the accused committed penetrative sexual assault on the victim 'X'?

9. **Decision thereon and the reasons for the decision**

The complainant Debojit Newar has testified as P.W.2 that he met the accused for the first time in the Police Station. He lodged this case against him. The incident took place about 2 years ago when his

daughter, in the pretext of going to the tailor eloped with the accused. He brought back his daughter but his daughter again eloped with the accused. He lodged the ejahar Exhibit-1 where the Exhibit 1(1) is his signature.

10. Similarly, the victim 'X' i.e. Smti. Pari Newar @ Parbin Begum testified as P.W.2 that Accused Alam Ali is her husband. In the month of February, in the year 2015, she eloped with the accused Alam Ali without informing her parents. When her parents found her missing her father lodged this case against the accused. As the police was searching for her, she appeared before the Mohanbari Out Post along with the accused person. The police recorded her statement and forwarded her to the hospital for medical examination and to the Magistrate for recording her statement. Exhibit-2 is her statement before the Magistrate and Exhibit-2(1) and Exhibit-2(2) are her signatures. At present, she was staying with the accused as his wife and she is blessed with one daughter.

During her cross-examination she stated that she eloped with the accused on her own volition as she had a love affair with him.

- 11. Analyzing the evidence of P.W-1 and P.W-2, it is held that the evidence does not at all implicate that the accused is complicit. The victim testified that she eloped with the accused on her own volition as she had a love relationship with the accused.
- 12. Thus, there is no evidence that the accused induced the victim 'X' to go with him or committed penetrative sexual assault on her. The victim gave her age 20 years today and the incident took place in the year 2015. Thus, it can be safely held that the victim was not a minor at the time of the incident.

- 13. In view of my foregoing discussions, it is thereby held that there is no evidence that the accused committed penetrative sexual assault upon the victim 'X' or kidnapped the victim or induced her by enticing her to go with him. The prosecution has failed to prove this case beyond all reasonable doubts. The accused Md. Alam Ali is acquitted from the charges under Section 366 A of IPC read with Section 4 of POCSO Act and set at liberty forthwith.
- 14. Judgment is signed, sealed and delivered in the open court on the 12^{th} day of June, 2017.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh

APPENDIX

Prosecution witnesses

PW-1 :-Sri Debojit Newar(complainant).

PW-2 :- Smti. Pari Newar @ Parbin Begum..

Defence witnesses

Nil.

Court witnesses

Nil.

Exhibits

Ext.-1 :- FIR.

Ext.-1(1) : - Is the signature of the complainant Sri Debojit

Newar.

Ext.-2 :- Is the statement of the victim before the

Magistrate.

Ext.2(1) & @(2):- Are the signatures of the victim Pari Newar.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.