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

SONITPUR, ASSAM

Spl. (POCSO) Case No. 03/2018

u/s 363 IPC/Sec. 8 of POCSO Act, 2012

State of Assam

-VS-

Sri Guna Jagdala @ Sanatan

..... Accused person

Present:

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

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.



Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P For the defence : Ms. S. Borah, learned Advocate

Dates of recording Evidence: 23.05.2018, 06.06.2018, 04.07.2018, 18.07.2018,

01.08.2018, 25.01.2019.

Date of Argument

: 08.03.2019.

Date of Judgment

: 18.03.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 14.12.2017 the informant, namely, Smti Janata Bhorasagar lodged an FIR with the OC, Gingia PS stating inter alia that on the same day at about 3 PM, when her 6 years old daughter (name is withheld) was playing with her friends in front of their house, the accused Guna Jagdala enticed her and took her away from that place by telling her that he would give her sweets. As the girl did not return to her house for long, she went in search of her and could learn that the accused had taken her with him. However, as she could not trace her along with the accused for long, she had lodged the FIR.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation the police submitted charge-sheet against the accused 363 IPC r/w Section 8 of POCSO Act.
- 3. The accused person in due course was produced from jail custody to face trial. The copies of the relevant documents were furnished to him. As the accused expressed his inability to engage of a counsel of his choice to defend him, the learned defence counsel was engaged from the penal of Legal Aid Counsel to defend the accused at the expense of the State.

Mode sessions Judge

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/ Section 8 of 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 as many as 11 witnesses in all. The accused was thereafter examined u/s 313 CrPC. His plea was total denial. He refused any evidence on his behalf. The case was thereafter argued by both the sides.

Points for determination

- i) Whether the accused person on the day of the alleged occurrence kidnapped the said victim, a minor girl from the lawful guardianship of her father, Sri Pinku Bharasagar?
- ii) Whether the accused person on the day of the alleged occurrence committed sexual assault on the said child who is below the age of 18 years?

Discussion, Decision and Reasons thereof

Let us straightway examine the evidence of victim, PW 2. After questing the victim about her name, age and address, it appeared to the Court that she has ability to understand the questions put to her and has the understanding to answer them rationally. As she told her age to be 6 and 1/2 years on the day of her examination, oath was not administered on her considering her tender age.

- 6. She in her evidence stated that her mother had lodged the case. She knows the accused who resides some distance away from their house. She stated that on the said day of occurrence, the accused took her with him by telling her that he would fetch woods. She thereafter accompanied him to the garden (Tea garden) where he asked her to sleep but as she did not do so, the accused pressed her neck. He thereafter covered her with garbage and after threatening her, left the place. She stated that after some time, she got up and saw two persons coming, who took her to their house. There she had rice. Her mother had telephoned those persons and brought her back. According to her, the accused person did not do anything more to her. She in her cross stated that the accused used to give her mortons. Thus from the evidence of the victim, PW 2, we find that no sexual was close to the victim who earlier used to offer her mortons.
- 7. When we turn to the evidence of the PW11- Medical Officer, Dr. Jonali Gogoi, who examined the victim on 15.12.2017, i.e., the next day of the occurrence, we find her, stating that she did not find any mark of injury on the body of the said victim but had noticed redness on her private part. She stated that sexual assault on the victim could not be excluded. She proved her medical examination report as Ext. 5. In her cross-

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- examination, she stated that the redness which she had found on the private part of the victim may also be caused by itching or by injury caused by tight panty.
- 8. Thus we notice that on the one hand the victim, PW 2 did not say anything with regard to any sexual assault committed on her by the accused but on the other hand, PW 11 had found redness on the private part of the victim. In such a circumstance, we cannot overlook the evidence of PW 11 as stated by in her in cross that the redness she had found on the private part of the victim may also be caused by itching or by injury caused by tight panty. The exception of the 361 IPC relating to kidnapping from the lawful guardianship states inter alia that the Section does not extend to the act of any person who in good faith believes himself to be entitled to the lawful custody of such child unless such act is committed for any immoral or unlawful purpose.
- 9. As we have noticed from the evidence of PW 2 that the accused had easy and regular access to the victim, who used to offer her mortons earlier and therefore it cannot be ruled out that he may have in good faith taken the victim with him on that day, as we find no other evidence to show that he had taken her for an immoral or an unlawful purpose. From the evidence as discussed above, more particularly, from the evidence of PW 2- the victim, we do not find any reliable evidence which shows that the accused had enticed the victim out of her lawful guardianship for any immoral or unlawful purpose.
- 10. The informant, PW 1, Janata Bhorasagar stated that she had seen a black spot near the neck of the victim which however is neither supported by PW 2 nor the PW 11. She also stated that she did see any other mark of injury on the victim which therefore cast a doubt on the evidence of PW 11 with regard to her finding that she had seen redness on the private part of the victim. Had there been any such injury, the victim's mother would have definitely seen the same. PW1 further stated that the victim did not say anything against the accused person. According to her, as the villagers told her that they had seen the accused taking away her daughter, she had lodged the FIR, which she proved as Ext. 1. PW 1 was further found to have stated in her cross that she had lodged the FIR against the accused out of suspicion.
- Addl. See Sions Soniton Charlett, FW 4 Shiva Ghotowal, PW 5 Super Bagh, PW 6 Dipak Sunar, PW 7 Sagar and See Sions Soniton Charlett, Sonit which he proved as Ext. 4.
 - 12. Thus from the evidence as discussed above, we do not find any reliable evidence against the accused to convict him on the offences charged against him. The prosecution has failed to prove its case. As such I acquit the accused person from the offences charged against him and set him liberty forthwith. As the accused had faced trial from custody, the

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Spl. (POCSO) Case No. 03/2018 jail authority be directed to release the accused forthwith, if he is not required in any other case. 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 18th day of March, 2019.

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

Addl. Sessions Judge Riswanath Chariali, Sonitpur



ANNEXURE

Witnesses examined by the Prosecution:

PW1- Smti Janata Bharasagar

PW2- Victim

PW3- Sri Sujit Tanti

PW4- Sri Siva Ghatowal

PW5- Sri Super Bagh

PW6- Sri Dipak Sonar

PW7- Sri Sagar Khandail

PW8- Sri Suresh Nag

PW9- ASI Ghana Kanta Das (I.O.)

PW10-SI Ratul Kumar Das (I.O.)

PW11- Dr. Junali Gogoi (M.O.)



Exhibits proved by the prosecution witnesses:

Ext.1- FIR

Ext.2- Sketch Map

Ext.3- Statement of victim u/s 164 CrPC

Ext.4- Charge sheet

Ext.5- Medical Examination Report of the victim

Witnesses examined by the Defence.

None

Documents exhibited by the Defence:

None.

Addl. Seeslone Judge