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

SONITPUR, ASSAM

Spl. (POCSO) Case No. 11/2018

u/s 4 of POCSO Act,2012

State of Assam

-VS-

Md. Wahidur Rahman

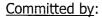
..... Accused person

Present:

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

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.



Learned SDJM(M), Biswanath Chariali

Advocates Appeared:-

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

For the defence

: Mr. P. Hazarika, learned Advocate

Dates of recording Evidence:29.05.2019, 03.07.2019.

Date of Argument

: 03.07.2019.

Date of Judgment

: 03.07.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 08.04.2018 the informant namely, Sri Kishore Mijar lodged an FIR with the OC, Behali PS stating inter alia that on the same day at about 10 AM, his 14-year-old daughter (name is withheld) was kidnapped by the accused on a vehicle when she was on her way to Borgang Bazar. Later, when the accused tried to molest his daughter at New Line of Monabari Tea Estate under Gingia PS, the local public apprehended them and handed them to Gingia PS.
- Receiving the same, the police registered a case and investigated the matter. After investigation the police submitted charge sheet against the accused u/s 366(A) IPC r/w Section 8 of POCSO Act, 2012.
- 3. The accused in due course appeared before this court, wherein the copies of the relevant documents were furnished to him. Taking note of the materials furnished u/s 173 CrPC and upon hearing both the sides on the point of charge, as this court found grounds for presuming that the accused had committed an offence u/s 4 of POCSO Act, 2012, the

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- charge was accordingly framed against him, which on being read over and explained, he pleaded not guilty.
- 4. During trial, the prosecution examined the informant/father of the victim as PW 1, the mother of the victim as PW 2 and the victim as PW 3. Looking into the evidence as adduced by all these vital witnesses, more particularly, the evidence of the victim- PW 3, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. As no incriminating evidence was found against the accused from the evidence of all these vital witnesses, the prosecution evidence was closed and the examination of the accused u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.

Points for determination

Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the father of the victim and the informant. He stated that the incident took place about 6 months back. According to him, his daughter was 20 years old at that relevant time. He stated that his daughter was taken away by the accused from the road when she was on her way to school. Herein he contradicts his FIR, wherein he stated that the victim was abducted from the way to Bargang bazar. He goes on to depose that later, when the accused and his daughter went towards Borbil Tea Estate, some people caught them and handed them over to police. The police informed his employer over phone and he then came to police station after receiving the news. He brought back his daughter from police station to his house and later he was told by his daughter had that the accused had did 'beya kam' with her. He further stated that his daughter has now been married at Guwahati. He in his cross examination stated that he lodged the FIR on being tutored by the villagers. He has no idea about the occurrence. He again stated that he lodged the case out of misunderstanding.
 - to her, police from Gingia PS had recovered her daughter and after getting the said news, her husband- PW 1 went to the police station. Later, when she asked her daughter, she did not tell her anything about the incident. She further stated that her daughter has now been married away. In her cross-examination, she stated that her husband lodged the FIR out of misunderstanding and she does not know the accused.
- 7. PW 3 is the alleged victim. She stated that the accused used to work near their house and at that relevant time she was not married. She stated that one day, her father had seen her talking with the accused and he out of misunderstanding lodged the FIR against the

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accused. She proved her statement recorded u/s 164 CrPC as Ext. 1 but testified that what she had stated then was in the manner in what she was asked to state by the villagers. She stated that the accused is innocent.

8. Thus from the evidence of all these vital witnesses, more particularly, from the evidence of PW 3, we do not find any evidence against the accused person to convict him on the offence charged against him. The prosecution has failed to prove its case. As such I acquit the accused person from the offence charged against him and set him at liberty forthwith. The provision of Sec. 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 3rd day of July, 2019.

(D. BORA)

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

Addi. Sessions Judge Biswanam Chanali. Sombur

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Sri Kishore Mijar

PW2- Smti Chitra Mijar

PW3- Victim



Exhibits proved by the prosecution witnesses:

Ext.1- Statement of the victim u/s 164 CrPC

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addit, Sessions Juriga Biswanath Charlan, Schilbur