### IN THE COURT OF SPECIAL JUDGE, BARPETA

Special POCSO Case No. 18/2018
(Arising out of Kalgachia P.S.Case No.121 of 2018)
U/S 366(A)/34 IPC R/W section 4 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge,

Barpeta.

**Charge framed on:- 27.07.2018** 

State of Assam

- Vs -

1. Jahangir Alom

2. Babul Ali.....Accused persons.

Date of Recording Evidence on – 23.05.2019

Date of Hearing Argument on – 23.05.2019

Date of Delivering the Judgment on - 23.05.2019

# Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused------Mr. D. Talukdar, Ld. Advocate.

### **JUDGMENT**

- 1. The prosecution case, in brief, is that on 17.02.2018, one Amzad Ali lodged an ejahar in the Kalgachia police station alleging inter-alia that on the same day at about 4:30 am while his daughter namely-(X) went for morning walk she was allegedly kidnapped by accused named in the FIR. Hence the case.
- 2. Following the information, Kalgachia police station registered a case being Kalgachia P.S. case No.121/18 u/s 366-A IPC and section 4 of POCSO Act. Accordingly, police took up

investigation of the case.

- 3. During the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim girl for recording her statement before Magistrate u/s 164 Cr.P.C, arrested the accused persons and finally on conclusion of investigation laid the charge sheet against accused Jahangir Alom u/s 366-A/34 IPC and section 4 of POCSO Act and against accused Babul Ali u/s 366-A/34 IPC with a view to stand trial.
- 4. During the course of time, the then learned Special Judge, Barpeta vide order dated 01.06.2018 took cognizance of the offences and on appearance also furnish copy to the accused persons. Thereafter, having heard the learned lawyers appearing for both sides and perusing the materials on record vide order dated 27.07.2018 charges u/s 366-A/34 IPC and section 4 of POCSO Act were framed against accused Jahingir Alom and charges u/s 366-A/34 IPC was framed against accused Babul Ali. The particulars of the offences on being read over and explained accused persons pleaded not guilty and claimed trial.
- 5. During the course of rial, the prosecution examined only 3 witnesses namely- the informant, victim (X) and the mother of the victim as PW-1, PW-2 and PW-3 respectively. However, considering the nature and quality of evidence adduced by all the three prosecution witnesses who are the alleged victim and her parents, giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked, accused declined to adduce defence evidence.

# 7. Now point for determination ;-

- 1. Whether on 17.02.2018 at about 4:30 am accused Jahangir Alom and Babul Ali in furtherance of their common intention moved the victim girl (X) aged about 14 years from near her residence knowing it likely that she might be forced or seduced to illicit intercourse with any other person including the accused persons as alleged?
- 2. Whether on the same day accused Jahangir Alom committed penetrative sexual assault on the victim girl (X) as alleged ?

### 8. Discussion, Decision and reasons for such decision :-

I have heard the learned lawyers appearing for both sides and also gone through the evidence on record carefully.

9. Before this court proceed to discuss the evidence available on record, it would be useful to refer section 366-A IPC.

**"Section 366-A IPC: procreation of minor girl:** Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- 10. On perusal of section 366-A IPC the following ingredients are found:
  - I) The accused induces a minor girl below the age of 18 years;
  - II) she was forced to go from any place or to do any act;
- iii) she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.
- 11. Now, in the context of the offence u/s 366-A IPC, let this court examined what the witnesses said in this regard.
- 12. Having considered the evidence of the alleged victim (PW-1), her father (PW-2) as well as her mother (PW-3) it is seen that there was love affairs before the victim girl and accused Jahangir Alom. As a result, she eloped with Jahangir, went to Channai, stayed there. But subsequently, she was recovered by her parents with the help of police.
- 13. However, in her cross examination the alleged victim (PW-1) categorically deposed that she eloped with accused because of her affairs with him and coming to know the fact that her father arranged her marriage with another boy. She also stated that whatever she had narrated before the Magistrate was as tutored by villagers and police.
- 14. PW-2 Amzad Ali is the father of the victim girl who deposed that on 17.02.2018 at 5 am when he got up from sleep he found his daughter missing. On being enquired, his wife told him that she went for morning walk but later on, she did not return. After discrete search it has come to their

knowledge that she eloped with Jahangir Alom.

- 15. In his cross examination he stated that Jahangir Alom is his brother and his daughter went with him voluntarily. But he filed the case on the misconception of fact.
- 16. PW-3 Lakima Khatun, is the mother of the victim girl, who also deposed in the same vain that her daughter eloped with Jahangir on her own volition as a result of her affairs with him.
- 17. On careful consideration of the evidence of all the three prosecution witnesses one thing is crystal clear that they have not given any implicating evidence against accused Jahangir Alom but stated that the alleged victim girl eloped with Jahangir on her own volition as a result of her affairs with him. None of the three prosecution witnesses have stated anything against accused Babul Ali that he did any act/acts along with Jahangir Alom in furtherance of their common intention. There is no whisper in their evidence that accused Babul Ali has attributed in any manner in commission of offence u/s 366-A IPC. Therefore, the ingredients of the offences u/s 366-A/34 IPC have not been established by prosecution against Jahangir Alom and Babul Ali. Moreover, in the evidence of the victim girl also there is no indication that accused Jahangir committed any penetrative sexual assault on her. She in her deposition clearly stated that whatever she has stated before Magistrate u/s 164 Cr.P.C. (Ext.1) was not her own expression but tutored and influenced by others. The other two witnesses PW-2 and PW-3 have not stated anything regarding this. Therefore, no inference can be drawn that accused committed any offence punishable u/s 4 of POCSO Act. It also transpires from the evidence of victim girl that she in her evidence stated her age as 20 years and the alleged offence was committed on 17.02.2018. The two prosecution witnesses namely-PW-2 and PW-3 have not stated anything regarding the age of the victim girl though in her statement before Magistrate u/s 164 Cr.P.C. (Ext.1) the victim girl stated her age as 15 years on 03.04.2018. But in the absence of any credible evidence adduced by prosecution regarding the actual age of the victim girl no inference can be drawn that at the relevant time the girl was minor.
- 18. In view of the foregoing discussion and reason, both the accused Jahangir Alom and Babul Ali are acquitted from the offences u/s 366-A/34 IPC and section 4 of POCSO Act on the ground of insufficient evidence and set them at liberty forthwith.
- 19. The terms of bail bond of accused persons are extended for a period of 6 (six) months

from to-day as provided U/S 437(A) Cr.P.C.

- 20. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 21. Let the case record be consigned to record room after completing the formalities.
- 22. Given under my hand and seal of this Court on this 23rd day of May 2019, at Barpeta.

Dictated & Corrected my me

Sd/-

Sd/-

(Sri C.B. Gogoi)

(Sri C.B. Gogoi)

Special Judge, Barpeta.

Special Judge, Barpeta.

# **APPENDIX**

1. The prosecution has examined the following 3 nos. of witnesses :-

PW-1 = is the victim girl (X).

PW-2 = is Amzad Ali, the informant.

PW-3 = is Lakima Khatun, the mother of the victim (X).

2. The prosecution has exhibited following document :-

Ext.1 = is the 164 Cr.P.C. statement of victim.

Ext.= 1(1) and 1(2) are the signatures of victim.

Ext.2= is the FIR.

Ext.2(1)= is the signature of informant.

Sd/-

(Sri C. B. Gogoi) Special Judge, Barpeta.