IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- <u>37 OF 2017</u>

(Under Section 366/493 of the IPC read with section u/s 4 of the POCSO Act, arising out of G.R. Case No. 1425 of

2015)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor State of Assam

-vs-

Accused :- Md. Ajijur Rahman,

Son of Md. Hazarat Ali, Resident of Boralimora Police Station — Sootea, Dist:- Sonitpur, Assam

Date of framing Charge :- 04/08/2017

Date of Recording Evidence :- 28/08/2017, 03/10/2017,

& 03/11/2017.

Date of examination of accused u/s 31 :- 30/11/2017

Cr.P.C.

Date of Argument :- 30/11/2017

Date of Judgment :- 30/11/2017

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. D. Borah, Advocate.

<u>JUDGMENT</u>

- **1.** In this case accused Md. Ajijur Rahman is put for trial for allegation of charge under Section 366/493 of the IPC read with section 4 of the POCSO Act, 2012.
- 2. The prosecution case according to the FIR in brief is that on or about 7 p.m. of 15-06-2015 while informant's sister just come out from their house towards the road, accused suddenly appeared with a motor cycle picked up her and took her to some unknown place. Hence, this prosecution case.
- 3. The ejahar was filed by the informant Muksidul Islam before the O/C of Sootea police station on 15-06-2015. On receipt the ejahar, the Officer-In-Charge of Sootea Police Station registered the case vide Sootea P.S. Case No. 98/15 u/s 143/366(A) of IPC. After completion of usual investigation, the O/C Sootea Police Station filed charge sheet u/s 143/366(A) of the IPC against the accused Md. Ajijur Rahman.
- **4.** On being appeared the accused before this Court, after hearing both parties, I framed charge u/s 366/493 of the IPC read with section 4 of the POCSO Act, against the accused Md. Ajijur Rahman and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case, prosecution has examined as many as 5 (five) witnesses. After examination of the victim, learned counsel for the accused submitted to close the evidence as to the statement of the victim no way supported the prosecution case. Even she admitted that accused married her by executing Kabil Nama, thereafter she lived with the accused as husband and wife for one day and next day police recovered her. Despite she admitted in cross-examination that at present she does not have any enmity with the accused and do not have any allegation against the accused. She has no any objection even if accused is enlarged on bail. On perusal of the statement of the victim, it appears that victim by giving good bye to the prosecution case stating

that she has no any objection if the accused is enlarged on acquittal and she herself eloped with the accused. With the statement of the victim, I think that prosecution case would not develop even if examined the other witnesses. Speedy trial is the right of the accused person. Considering the materials and facts as narrated above, the prosecution evidence is closed. Accused was examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the allegation and evidence and declined to give defence evidence.

- **6.** I have heard arguments put forwarded by learned advocate of both the parties.
- **7.** The point for decision in this case is that -
 - (1) "Whether on or about 15-06-2015, at about 7 p.m., the accused kidnapped (abduct) Miss X, the sister of the informant, with intent (or knowing it to be likely) that she might be compelled to marry the accused against her will or inorder (or knowing it to be likely) that she might be forced (or seduced) to illicit intercourse with the accused and that you thereby committed an offence punishable U/S 366 of the IPC?
 - (2) "Whether the accused on the same, date time and place and thereafter by deceit, caused a certain woman, to wit Miss X, who was not lawfully married to you to believe that she was lawfully married to you and in that belief, cohabit or have sexual intercourse with you and that you thereby committed an offence punishable U/S 493 of the IPC?
 - (3) "Whether on the same, date time and place the accused committed penetrative sexual assault on "Miss X" (victim) and thereby committed an offence punishable under section 4 of the Protection of Child from Sexual Offences Act?

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1 MUksidul Islam, the complainant of this case, stated that the incident took place on or about 7 p.m. of 2015. The victim is his younger sister. Accused Ajijur Rahman kidnapped his younger sister at about 7 p.m. from the front side of their house. Accused took the victim in his lap towards the back side of their house. He came to know about the incident at about 9/10 p.m. on that day from his mother. On that very day he filed the ejahar. After 2/3 days accused and victim were recovered and handed over to police station. At the time of incident, the age of his victim sister was 17 years 8/9 months. Police seized the birth certificate of the victim. Ext. 1 is the ejahar and Ext. 1(1) is his signature. Ext. 2 is proved in original copy of transfer certificate issued by Head Master of Siporia High School.

In cross-examination, he admitted that he has not stated before police and in the FIR that while the victim girl went to another room accused suddenly kidnapped her. Accused is a carpenter.

10. PW 2, Abdul Khaleque, stated before this court that he knows the accused. Najima Begum is his daughter. Complainant is his son. At the time of incident, the age of his daughter is 15/16 years. The incident took place about two years ago in the evening at about 6/7 p.m. On the day of incident he was at my home. Accused along with two others forcefully kidnapped his daughter gagging her mouth when she was outside the house. He saw the accused kidnapped his daughter. Then he raised hulla and called his wife. After four days they found his daughter at the police station. After recovery of the girl he has not asked anything about the incident to her.

In cross-examination he admitted that there are 3-4 persons reside in between his house and the house of the accused. Police had not interrogated him in connection with this case. It is only that day he

has deposed before this court for the first time. At the relevant time he was in bed.

11. PW 3 Musstt Joshnara Begum, the mother of the victim stated that she knows the accused. Around $2 - 2\frac{1}{2}$ years at about 6 p.m the incident had taken place. On the date of occurrence, he was inside his kitchen. On the date of occurrence at about 6 p.m. accused along with others forcibly kidnapped his daughter by gagging her mouth when she was coming from one house to another. When he came out after hearing her cry then she saw accused Ajijur Rahman but she could not identify the others 2 or 3. When she was searching for her daughter and in absence of his daughter his son had filed a case. She was kept in some unknown place for 2-3 days and after that they met their daughter at the police station. Police came and asked about the incident and recorded her statement.

In cross-examination, she admitted that after recovery of her daughter by police she went to police station. She along with 4-5 others went to the police station to meet her daughter. She along with her daughter accompanied by his son Muksidul Islam and one Jahirul Islam came to Tezpur court for recording her statement. At the time of incident while she made due and cry around 7/8 persons gathered at the place of occurrence. She cannot identify any of them as there was a dark set in. However, she can identify two persons namely Abdul Rashid and Ubiadul Rahman of their voices. The incident took place around 2-2½ years back. At the relevant time her husband was blind and also deaf. On hearing her hue and cry her husband came out. He asked her about the incident and she told him about the whole incident.

12. PW 4 Ajaharuddin deposed that he knows the accused Ajijur Rahman. He also knows the victim girl. She is her aunty. At the time of incident, the age of her victim aunty was below 18 years. Incident took place about two years ago. He has not seen the incident. On the day of incident, at about 6/7 p.m. he heard hue and cry in the house of victim. Victim resides near their house. If a hulla took place in the house of the

victim they have heard easily from their house. Then he rushed to the house of his victim aunty. There he came to know from his Daddy (grand-mother) that accused took Najima Khatoon to the house of his relatives. After about 2 days Najima was recovered from the house of Ajijur's relative. He has met her at Sootea Police station.

13. PW 5 victim Miss "X" deposed that she knows the accused person. His name is Azizur Rahman. He is their neighbour. The incident took place on 15-06-2015 at about 6.30 PM. At the relevant time she was at her study room. During that time accused along with Ubaildul Islam and other two miscreants came to their house. During that time Mohida Khatun who is their neighbour called her mother outside the house. The miscreants were come to her house and covered her eyes with clothes. Initially, they dragged her and then they took her to the house of sister of accused in a vehicle situated at Jalighat near Biswanath Chariali. During that time she raised alarm. The name of the sister of the accused is Afrooza khatun. He kept her there for 3/4 days. On the very first day she slept with his niece, and then he took her to the "Kaji" of Biswanath Chariali. There he married her by executing "Kabilnama". Thereafter, she lived with the accused together as husband and wife for one day. In the next day police recovered her. Thereafter, police took her for medical examination and then produced her before the learned Magistrate, Tezpur for recording statement under Section 164 CrPC. Ext.3 is the statement under Section 164 CrPC and Ext. 3(1) and Ext.3(2) are her signatures. Police seized her School Certificate.

In cross-examination, she admitted that at Biswanath Chariali she resides four days. Within the four days, he performed Kabilnama. After two days of her taking, accused executed Kabilnama and thereafter, she stayed together with the accused as husband and wife. Police recorded her statement. After recovery by the police, she stayed one night at the police station. In the next day police took her to KCH, Tezpur for medical examination and then to the Court. She has talked

with her family members in the police station. She further admitted that at present, she does not have any enmity with the accused and does not have any objection against the accused. She does not know any Akbar Ali and Amiruddin. She does not have any objection, if the accused is enlarged on acquittal.

- **14.** These much is the evidence of the prosecution.
- **15.** The accused pleads total denial while his statement was recorded u/s 313 Cr.P.C. he also denied to give defence evidence.
- **16.** I have heard the arguments put forwarded by learned counsel of both sides.
- **17.** To prove the charge u/s 366 of the IPC, the prosecution must prove -
 - "(i) kidnapping by the accused or abduction by him;
 - (ii) that the person so kidnapped or abducted is a woman;
 - (iii) that the accused then intended, or knew that it was likely,
 - (a) That such woman might or would be compelled to marry a person against her will, or
 - (b) That she might or would be forced or seduced to illicit intercourse."
- **18.** But here in this case, the victim herself giving goodbye to the prosecution case by stating that she has no any objection if the accused is enlarged on acquittal. Besides stating that, she has no any allegation against the accused. The victim initially though stating that accused has kidnapped her by taking her in his lap in the night but it is impossible for a person to take a woman of 26 years of age in lap. Had accused been really kidnapped her by taking her in his lap she could have raised alarm but she did not do so. Besides according to her she was brought

to "Kaji" at Biswanath Chariali where "Kabil Nama" was executed but before Kaji she did not raise any protest that she did not have consent to sit marriage with the accused. Neither she raised protest before Kaji that she was forcibly kidnapped by the accused against her will implied that she went with the accused with her own consent. Therefore, the allegation of charge u/s 366 of the IPC is failed.

- **19.** To prove the charge u/s 493 of the IPC read with section 4 of POCSO Act, prosecution must prove –
- (i) that the accused caused the woman in question to believe that she was lawfully married to him;
- (ii) that he induced that woman to cohabit with him under that belief:
 - (iii) that he caused such belief by deceit.
- **20.** Here in this case, the victim stated that initially on the day of taking till execution of "Kabil Nama" there is no any evidence that she had been cohabited by the accused. In the statement of the victim it is already stated that after execution of "Kabil Nama" she had co-habited with the accused for the first time. When the "Kabil Nama" was executed without any protest it is presumed that the marriage was held lawfully, so the question of sexual intercourse with a woman who was not lawfully married is not arise. Therefore, the charge u/s 493 of the IPC is also failed.
- **21.** To be charged against an accused under POCSO Act, the victim must have been below 18 years but according to the victim she was 26 years of age on the day of incident. As because, she made statement before the court on 3rd November, 2017, on that day, her age was 28 years. Therefore, the case cannot be come under any of the section of POCSO Act.
- **22.** In view of the aforesaid discussions, I am bound to hold that the prosecution has failed to prove any of the charge levelled against

the accused person beyond any reasonable doubt. As such, the accused Md. Ajijur Rahman is entitled to get acquittal on benefit of doubt. Hence, accused Md. Ajijur Rahman is acquitted and set him at liberty forthwith.

- **23.** The liability of the bailor is hereby discharged.
- **24.** Send back the GR Case record being No.1425/15 to the learned committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the 30^{th} day of November, 2017.

(A.K. Borah)
Special Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(A.K. Borah) Special Judge, Sonitpur, Tezpur.

Transcribed and typed by me.

(R. Hazarika)Steno.

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Sri Muksidul Islam, complainant

2. Prosecution Witness No.2 :- Abdul Khaleque.

Prosecution Witness No.3 :- Mustt Joshnara Begum,

Prosecution Witness No.4 :- Ajaharuddin,

Prosecution Witness No.5 :- Victim.

EXHIBIT

Ext. 1 : Ejahar.

Ext. 2 : Transfer Certificate.

Ext. 3 : 164 Cr.P.C. statement of the victim.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR.