# IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 13/2018 corresponding to GR Case No. 478/2018 & Dokmoka

Police Station Case No. 24/2018

U/S 363 of the IPC/ 4 of the POCSO Act.

State of Assam

Versus

Shri Prafulla Bordoloi

## Name of informant/complainant:

**Smt Asina Basumatary** 

Wife of Sri Budhu Basumatary

Vill: Ajarguri PS: Dokmoka

Dist: Karbi Anglong, Assam.

# Name of the accused person facing trial:

Shri Prafulla Bordoloi S/O Sri Deep Bordoloi

Vill- Borkhula

P.S: Nagaon Sadar

District: Nagaon, Assam.

## Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor

For the defence : Mr. G. Deka

Date(s) fixed for Argument:

07.03.2019/20.03.2019/01.04.2019

Judgment pronounced & delivered on: 09.04.2018.

### **JUDGMENT**

- It is a case of Kidnapping of a minor girl and penetrative sexual assault on her alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 10-05-2018 the informant named above lodged a written ejahar with Dokmoka Police Station stating inter-alia that on 07-05-2018 at 10 AM while the victim came to Langhin, the accused person took away her forcibly on temptation of marrying her. On receipt the written ejahar, Dokmoka Police Station registered a criminal case vide Dokmoka Police Station Case No. 24-18 under section 363 IPC and started investigation. On completion investigation, the charge sheet was submitted under section 363 IPC/4 of the POCSO Act against the accused person. On completion of investigation, the charge sheet was submitted under sections 366 IPC/8 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the present accused person before the Court, Copy was supplied to the accused person. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary I found that there was ground for presuming that that the accused person committed the offenses U/Ss 363 of the IPC/4 of the POCSO Act and accordingly, the charges were framed. The particular of the offence charged was duly read over and explained to the

accused person to which he pleaded not guilty and claimed to be tried.

4. During trial, Prosecution has examined as many as 8 (eight) witnesses including the informant. Statement of the present accused was recorded under section 313 of Cr.P.C. Defence has declined to adduce evidence. Plea of defense is of total denial.

#### 5. **Points for determination**

- (i) Whether the present accused person alongwith other five accused persons on 07.05.2018 at about 10:00 AM at Ajarguri gaon under Dokmoka Police Station kidnapped victim from the possession of the informant who was legal guardian?
  - (ii) Whether the accused on / after 07-05-2017 at about 10 PM at Ajarguri gaon under Dokmoka Police Station or in any other place made penetrative sexual assault upon the victim?

#### **Decisions and reasons thereof:**

6. I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove the

case beyond all reasonable doubts. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

7. At first let us see how the victim was old the time of occurrence. According to PW-1 who is the mother of the victim, at the time of occurrence the victim was 15 years. According to PW-2, at the time of occurrence the victim was 15 years. Evidence of PW-3 and PW-4 is silent as to how old victim was at the time occurrence. PW-6 is the medical officer who examined the victim and according to her the victim was above 18 years at the time of occurrence as per X-report. According to victim, at the time of occurrence she was 16 years. M-Ext-1 is the birth certificate of the victim which shows that her date of birth is 27-11-2002. According to M-Ext-1, at the time of occurrence the victim was 15 years 5 months 10 days. It appears that M-Ext-1 was issued on 31-11-10 i.e it was obtained almost after 8 years from the date of her birth. Ext-2 is the seizure list by which one original Birth certificate in the name of victim was seized. Ext-2 also shows that in the certificate date of birth of the victim is shown as 27.11.2002 and date of issue is shown as 31.12.2010. There is a doubt whether actual date of birth was given in M-Ext-1. Ext-4 is the statement of the victim record under section 164 of the CrPC which shows that at the time of occurrence she was

17 years. Taking all aspects into consideration I find that there is doubt that at the time of occurrence, the victim was below 18 years. In view of the discussion made above, it has become crystal clear that the victim was not child as defined in the section 2 (d) of the POCSO Act.

8. In such case evidence of the victim plays vital role.PW-7 is the victim who has admitted in her cross-examination that she fled away with the accused person on her sweet will. Her evidence shows that the accused made sexual intercourse with her with her consent. That apart she has also stated in her cross-examination that she does not desire the accused to be punished.

#### **ORDER**

- 9. In the result I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubt. On benefit of doubt, the accused person is here by acquitted from the charges brought against him and let him set at liberty forthwith. Let the seized certificate be remained with the informant. The bail bond shall be stood cancelled after six months. Accordingly this case is disposed of on contest.
- 10. Given under my hand and seal of the Court on this 09<sup>th</sup> April, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS) Special Judge Diphu, Karbi Anglong, Assam (Md. A.U.Ahmed, AJS) Special Judge Diphu, Karbi Anglong,