IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 18 (DH)/ 2018.

U/S 376 IPC R/W Sec. 8 of POCSO Act.

(G.R. Case No.1147/2017 (DMJ), Dhemaji P.S. Case No.472/2017 Under Section 366(A) of IPC.)

The State of Assam

- Versus -

Shri Nana Dihingia,

.....Accused Person

S/O Prabhat Dihingia,

R/O Sripani Rupahi Pathar,

P.S. Silapathar,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri L. Chrtry, Advocate

.....For the Accused

Date of prosecution evidence

: 07-08-2017,

Date of argument

: 14-08-2018

Date of Judgment

: 16-08-2018.

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JUDGMENT

- 1. The prosecution case in brief is that on 07-12-2017 complainant-Shri Chandra Borgohain lodged an ejahar with Dhemaji Police Station alleging interalia that on 05-12-2017 at about 9 AM while his minor daughter-Smt. Jerina Borgohain, aged about 16 years, was going to school, the accused Nana Dihingia took away her from the road and kept her at Silapathar. It is also stated in the ejahar that the accused thereafter brought her to the house of a person at Sissiborgaon and the complainant recovered his daughter from the said house at Sissiborgaon and brought her back home.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Nana Dihingia u/s 366/376 of IPC R/W section 4 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 366/376 of IPC read with Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined three witnesses. After closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

4. **Point for determination**:

(1) That you, on 05-12-2017 at about 9 AM, you kidnapped/.abducted Smti Jerina Borgohain, a minor girl aged about 16 years from Dhemaji Tiniali with intent that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC .

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- (2) That you, on the same date and thereafter you committed rape on Smt. Jerina Borgohain, a minor girl, aged about 16 years having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s 376 of IPC.
- (3) That you, on the same date and thereafter, you committed penetrative sexual assault on Miss 'X', a minor girl aged about 16 years and thereby committed an offence punishable u/s 4 of the POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof:

6. **PW1** Shri Jerina Borgohain stated that complainant is her father. She knows the accused. The incident took place about 7/8 months back (from the date of her recording evidence). The accused has been her acquaintance for a long time. On the date of occurrence she went out with the accused to roam around. She did not return back home and her parents were worried and they lodged compliant before police. Her parent with the help of Police took her back home. She went with the accused to his relative's house and stayed there for a night. On being asked, she told her parents that she had voluntarily gone with the accused and she did not abuse her physically.

In cross examination PW1 stated that after filing of the case and after she told her parents about the accused, her parents decided not to proceed against the accused. They have no objection if the case ends in acquittal.

7. **PW2** Chandra Borgohain stated that he is the complainant. He knows the accused. Victim Jerina Borgohain is his daughter. The incident took place about 7/8 months back. On the date of occurrence his

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daughter went out with the accused to roam around. She did not return back home and they were worried and he lodged complaint before police. They with the help of Police took her back home. Later on from his daughter they came to know that she went with accused to his relative's house and stayed there for a night. On being asked she told them that she had voluntarily gone with the accused and he (accused) did not abuse her physically. Ext.1 is ejahar. Ext.1(1) is his signature.

In cross examination PW2 stated that after filing of the case and after she told them about the accused, they decided not to proceed against the accused. They have no objection if the case ends in acquittal.

8. **PW3** Pranab Borgohain stated that complainant is his elder brother. He knows the accused. Victim Jerina Borgohain is his cousin daughter. The incident took place about 7/8 months back. On the date of occurrence their cousin daughter went out with the accused to roam around. She did not return back home and they were worried and his brother lodged complaint before police. They, with the help of Police took her back home. On being asked she told them that she had voluntarily gone with the accused and the accused did not abuse her physically.

In cross examination PW3 stated that after filing of the case and after she told them about the accused, they decided not to proceed against the accused. They have no objection if the case ends in acquittal.

Appreciation of Evidence:

9. From the discussion of the evidence on record, it appears that in this case the complainant and the victim girl were examined as P.W-1 and PW2 respectively. PW3 is the younger brother of PW2. In their evidence all the three vital witnesses stated that on the date of occurrence the victim went out with the accused to roam around. She did not return back home and they were worried and PW2 lodged complaint before

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police. They, with the help of Police took her back home. Later on from his daughter they came to know that she went with accused to his relative's house and stayed there for a night. On being asked, she (victim) told them (PWs- 2 and 3) that she had voluntarily gone with the accused and he (accused) did not abuse her physically. From the evidence of the P.Ws-1,2 and 3, it is seen that both the parties have compromised the case outside the Court and hence they are not inclined to proceed in this case against the accused. All the P.Ws. (PWs-1,2 and 3) have stated in their cross-examination that they have no objection if the case is ended in acquittal. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 10. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. I find that the prosecution has totally failed to prove the charges u/s 366/376 of IPC read with Section-4 of the POCSO Act against the accused.
- In view of the above, I find the accused-**Nana Dihingia** not guilty u/s 366/376 of IPC read with Sec. 4 of the POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- Judgment is pronounced in open Court.

13. Given under my hand and seal of this Court on this the 16th day of August/2018.

Special Vidge,