IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 43 (DH) 2018.

U/S 366 (A)/366 of IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

1. Shri Basistha Sarkar,

S/O Chandra Sarkar,

Vill. Kekuri Kata Pabana,

P.S. Garmurh

Dist.- Majuli (Assam), and

2. Shri Budhi Malo,

S/O Lt. Nakul Malo,

Vill. Siyal Chapari,

P.S. Silapathar,

Dist. Dhemaji (Assam)Accused Persons.

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Appearance:

Shri A. Fogla,

Public ProsecutorFor the State

Shri K.C. Sonowal, AdvocateFor the Accused

Date of prosecution evidence : 25-01-2019.

Date of argument : 02-02-2019.

Date of Judgment : 06-02-2019.

JUDGMENT

- 1. The prosecution case, in brief, is that on 08-09-2017 complainant- Shri Mohan Rajbonshi lodged an ejahar with Silapathar Police Station alleging interalia that on 12-07-2018 at day time his niece Smti Sajana Rajbonshi went out from his house and thereafter she was missing. It is stated in the ejahar that on search, they came to know that the accused-Basistha Sarkar kidnapped his niece and took her to Kakurikata Pabna Gaon, P.S. Garhmur, Dist.- Majuli and thereafter, the victim girl was recovered from Majuli on 07-09-2018.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person u/s 366(A) of IPC R/W Sec. 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 of IPC read with Sec. 4 of POCSO Act against accused- Basistha Sarkar and charge u/s 366 (A) of IPC against the accused- Budhi Malo. The charges were read-over and explained to the accused persons to which they pleaded not guilty. The prosecution, in order to prove its case, examined three witnesses. At the closure of the prosecution evidence statements of the accused persons were recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

4. **Points for determination**:

(1) That, on 12-07-2018 at day time at Siyal Chapari Gaon under Silapathar Police Station, you (accused-Budhi Malo) kidnapped/abducted **Smti Sajana Rajbonshi**, a minor girl aged about 11 years to go from Siyal Chapari Gaon to Kakurikata Pabna

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- Gaon, P.S. Garhmur, Dist.- Majuli or to do any act with intent with intent that such woman may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another persoin and thereby you committed an offence punishable u/s 366 A of IPC.
- (2) That, on 12-07-2018 at day time at Siyal Chapari Gaon under Silapathar Police Station, you (accused-Basistha Sarkar) along with Budhi Malo kidnapped/abducted **Smti Sajana Rajbonshi**, a minor girl aged about 11 years with intent that she mightr be compelled to marry you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.
- (3) That, on the same day at same time and thereafter, you (accused-Basistha Sarkar) committed penetrative sexual assault on **Smti Sajana Rajbonshi**, a minor girl aged about 11 years and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** Smti Sajana Rajbonshi stated that the complainant is her maternal uncle. She knows the accused persons. Accused Bashista Sarkar had been very friendly with her. She used to visit places and festivals with her friend Bashita Sarkar. On the date of occurrence also she went to Majuli with Bashita and his friends. She stayed in Majuli for some days. Her parents got worried and lodged complaint before police. Her parents also asked them (victim & accused) to come back home and accordingly they came back home.

Defence declined to cross-examine the victim (PW1).

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PW2 Smt. Bimala Rajbonshi stated that the complainant is her brother. She knows the accused persons. Accused Bashista Sarkar had been very friendly with her daughter. She used to visit places and festivals with his friend Bashita Sarkar. On the date of occurrence also she went to Majuli with Bashita and his friends. She stayed in Majuli for some days. They got worried and lodged complaint before police. They also asked them to come back home and accordingly they came back home.

In cross- examination PW2 stated that due to some misunderstanding they lodged complaint against the accused. But at present they are maintaining cordial relation with the accused and they also want to give their daughter in marriage with the accused in future. She has no objection if the accused persons are acquitted in this case.

8. **PW3** Mohan Rajbongshi stated that he is the complainant. He knows the accused persons. Accused Bashista Sarkar had been very friendly with hisnephew. She used to visit places and festivals with his friend Bashita Sarkar. On the date of occurrence also she went to Majuli with Bashita and his friends. She stayed in Majuli for some days. They got worried and he lodged complaint before police. They also asked them to come back home and accordingly they came back home. Ext.1 is ejahar.

In cross- examination PW3 stated that due to some misunderstanding he lodged complaint against the accused. But at present they are maintaining cordial relation with the accused and they also want to give our daughter in marriage with the accused in future. He has no objection if the accused persons are acquitted in this case.

Appreciation of evidence:

9. From the discussion of the evidence on record, it appears that in this case the victim- Smti Sajana Rajbonshi, her mother-Smti Bimala Rajbonshi and the complainant-Shri Mohan Rajbonshi (victim's maternal

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uncle) were examined as P.W-1, PW2 and PW3 respectively. In their evidence this three vital witnesses stated that Accused Basistha Sarkar had been very friendly with the victim girl (PW1). She used to visit places and festivals with her friend Bashita Sarkar. On the date of occurrence also she went to Majuli with Bashita and his friends. She stayed in Majuli for some days. They (PWs-2 & 3) got worried and accordingly PW3 lodged complaint before police. They also asked them to come back home and accordingly they (victim & accused) came back home. In cross- examination PW- 2 and 3 stated that due to some misunderstanding complaint had been lodged against the accused. But at present they are maintaining cordial relation with the accused and they also want to give the victim (PW1) in marriage with the accused in future. Further, PWs- 2 and 3 stated in cross-examination that they have no objection if the accused persons are acquitted in this case. 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. It is also seen from the evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused persons. I find that the prosecution has totally failed to prove the charge u/s 366 (A) of IPC against the accused-Budhi Malo. Prosecution also failed to prove the charges u/s 366 of IPC against accused-Basitha Sarkar u/s 366 of IPC read with Sec.-4 of the POCSO Act.
- In view of the above, I find the accused-**Budhi Malo** not guilty u/s 366 (A) of the I.P.C. Accused-Basistha Sarkar is also found not guilty u/s 366 of IPC R/W sec. 4 of POCSO Act. Accordingly, both the accused persons are acquitted of the charges leveled against them. Set them at liberty forthwith.

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- 12. Judgment is pronounced in open Court.
- 13. Given under my hand and seal of this Court on this the **6th day** of February/2019.

(S. Das) Special Judge, Dhemaji.