IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM



<u>Spl. POCSO Case No. 8/2017</u> u/s 366-A IPC r/w Sec. 4 of POCSO Act, 2012

State of Assam

-VS-

Sri Bipul Das

..... Accused

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Mr. J. Bardoloi, learned Addl. P.P For the defence : Mr. S. Rahman, learned Advocate.

Dates of recording Evidence: 22.05.2018, 27.06.2018, 18.07.2018.

Date of Argument : 18.07.2018.

Date of Judgment : 18.07.2018.

JUDGMENT

- 1. The prosecution case in brief is that on 26.03.2017 the informant, Sri Dilip Das lodged an FIR with the O/C, Behali P.S. stating inter-alia that on 22.03.2017 at about 4 A.M. when his daughter (name is withheld), who was born 15.10.2002, went out of their house to attend nature's call, the accused Bipul Das abducted her and he thereafter has kept her confined at an unknown place.
- Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge-sheet against the accused Bipul Das u/s 366 IPC r/w Section 4 of POCSO Act, 2012.
- 3. The accused in due course appeared before this court to face trial. Copies of the relevant documents were furnished to him. Upon hearing both the sides on the point of charge, taking note of the materials furnished 173 CrPC, as my learned predecessor found grounds for presuming that the accused had committed offences u/s 366(A) IPC, r/w 4 of POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.
- 4. During trial, the prosecution examined four witnesses in all, including the victim as PW 1

Addi. Sessions Judge
Addi. Sessions Judge
Biswanam Chanain

and the informant as PW 2. Looking into the evidence as adduced by these two vital witnesses, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen the prosecution case. Looking into the materials on record, the prosecution evidence was closed. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.



Points for determination

- i) Whether the accused on the day of the alleged occurrence abducted the said victim, who is a minor girl under the age of 18 years with intent that she may be or knowing that it is likely that she will be forced to illicit intercourse with another person?
- ii) Whether the accused on or about the day of the alleged occurrence committed penetrative sexual assault on the said victim?

Discussion, Decision and Reasons thereof

- 5. PW 1 is the victim. She stated that she had love affair with the accused and therefore, she willingly fled with him to Jagiroad. There they stayed in the house of the elder sister of the accused. They were thereafter recovered from that place by police. She proved her statement recorded u/s 164 CrPC as Ext. 1. She further deposed that the accused did not misbehave her during the said period. In her cross-examination, she stated that she had on her own wish gone with the accused. She stated that she wants to married to the accused and what she had stated in the Ext. 1 was based on the direction of her father. She further stated that she could not say about her actual age and she had failed in Class IX once. She stated that she accompanied the accused for an outing to his elder Addl. Sessions July along with the accused on her own wish for an outing to his elder sister's house at Jagiroad and the accused did not kidnap her.

 6. PW2-The Tet.
 - house on 22.03.2017 and as they could not find her out, he lodged the FIR after 4 days. Later, the police recovered his daughter from a road. He stated that his daughter was recovered from a road at a place called Naltali in Kaliabor. He however stated that he has no idea of the place Naltali. Further, he stated that he could not say as to whether his daughter had accompanied the accused to that place on her own wish.
 - 7. From the evidence of PW 2, it therefore appears that he could not say as to whether the victim had gone with the accused on her own wish. PW3 is the mother of the alleged victim, Smti Dipali Das. She has deposed in the same manner as was testified by her

Spl. POCSO Case No. 08/2017

husband, PW 2. She in her cross-examination stated that she could not say with whom her daughter had gone. According to her, no one had seen any person taking away her daughter. She also stated that she has no idea as to whether her daughter had gone with the accused on her own wish.

- 8. PW 4, Nibaran Das stated that he had heard that the victim had fled away with the accused. He stated that he has no knowledge about the said incident.
- 9. Thus, from the evidence of all these prosecution witnesses, more particularly, from the evidence of the victim- PW 1, we find that she was not kidnapped by the accused. But on the other hand, she stated that she willfully had accompanied the accused to his elder sister's house. Further, she stated that the accused did not misbehave her during her stay in his elder sister's house. When we take judicial notice of the medical examination report of the victim as is available in the case record, we find that the doctor examining her did not find any mark of injury on her body or on her private parts. Further, the doctor did not find any recent sign of sexual intercourse on her.
- 10. Thus from the evidence on record, we do not find any material to convict the accused on the offences charged. The prosecution has failed to prove its case against the accused. As such, I acquit the accused person from the offences charged against him and set him at liberty forthwith. The petition no. 1429/2018 filed u/s 437-A IPC is allowed upon hearing both the sides. The bail bond executed on behalf of the accused is extended for a period of six months. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 18th day of July, 2018.

Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur, Assam.

Addl. Sessions Judge Biswanath Chariali, Sonitpur





ANNEXURE

Witnesses examined by the Prosecution:

PW1- Victim

PW2- Sri Dilip Das

PW3- Sri Dipali Das

PW4- Sri Nibaran Das

Exhibits proved by the prosecution witnesses:

Exhibit-1: FIR.

Exhibit-2: Victim's statement u/s 164 CrPC

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

18/7/18

Addl. Sessions Judge Biswanath Chariali, Sonitpur