### IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC,

#### SONITPUR, ASSAM

### **Spl POCSO No. 53 of 2019**

U/S 363 of IPC, r/w Section 4 of POCSO Act, 2012

State of Assam

-VS-

Md. Bibul Ali

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS,

Special Judge,

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur.

### Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence

: Mr. P. Hazarika, learned Advocate

Dates of recording Evidence: 13.02.2020

Date of Argument

: 13.02.2020.

Date of Judgment

: 13.02.2020.

### <u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 01.09.2018 the informant namely, Md. Abdul Sattar lodged an FIR with the OC, Sootea Police Station stating inter alia that on 25.08.2018 at about 6.30 PM, when his 15-year-old daughter (name is withheld) was loitering on the road in front of their house, the accused Bibul Ali kidnapped her and since then her whereabouts is not known.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused person u/s 365 IPC r/w Section 4 of the POCSO Act.
- 3. The accused person in due course, appeared before this court to face trial. The 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 u/s 173 CrPC, as this court found grounds for presuming that the accused has committed offences u/s 363 IPC, R/W Section 4 of the 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 two witnesses in all including the informant and the

#### Spl POCSO No. 53/2019

alleged victim. Looking into the evidence as adduced by both these vital witnesses, more particularly, the evidence of the victim-PW 2, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of 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.





- i) Whether the accused on the day of the alleged occurrence kidnapped the said victim who is a minor under the age of 18 years from the guardianship of the informant, her father?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the victim who is below the age of 18 years?

### **Discussion, Decision and Reasons thereof**

- 5. PW 1 is the informant and the father of the alleged victim. He stated that the incident took place about 2 years back. After returning to his home, on that day, he did not find his daughter. Upon receiving some feedbacks from the people nearby, he out of suspicion, lodged the 'ejahar' against the accused, which he proved as Ext. 1. Later, when his daughter returned and revealed to him about actual occurrence that he could learn that he had lodged the FIR out of misunderstanding.
- 6. PW 2 is the victim. She stated that on the day of the occurrence she went out from her house. But as she returned late to her house, her father in the mean time on being told by others lodged an FIR against the accused out of anger. Later she disclosed about the real incident to him and then he realized that he had lodged the 'ejahar' out of misunderstanding. She proved her statement recorded u/s 164 CrPC as Ext.2. In her cross, she stated that she did not go with the accused on that day.
- 7. Thus from the evidence of both these witnesses, more particularly from the evidence of the victim-PW2, we do not find any material against the accused to convict him on the offences charged against him. The prosecution has failed to prove its case. As such I acquit the accused and set him at liberty forthwith. His bail bond stands discharged. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. 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 13th day of February,

2020.

(D. BORA)

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

SHARE SEE THE SEE THE

### **ANNEXURE**

# Witnesses examined by the Prosecution:

PW1- Md. Abdul Sattar (Informant)

PW2- Victim.

# **Exhibits proved by the prosecution witnesses:**

Ext.1- FIR

Ext. 2- Statement of the victim recorded u/s 164 CrPC.



# Witnesses examined by the Defence:

None

# **Documents exhibited by the Defence:**

None.

Anal, Sessions Judge Brankman Chimnan, Sumbar