# IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

#### **Special (POCSO) 08/2017**

## State of Assam

-Vs-

1. Bipin Kurmi......Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused : Mr. Jayanta Kumar Brahma, Learned Advocate.

Date of Evidence : 05-07-17: 18-07-17: 12-12-17: 02-02-18:

20-09-18: 01-11-18.

Date of Argument : 01-04-19: 10-04-19.

Date of Judgment : 22-04-19.

#### **JUDGMENT**

- The prosecution case in brief is that on 12-01-17, informant Padum Mahato lodged an FIR with the Officer-in-Charge of Orang P.S. alleging that on 11-01-17, at about 06.00 am he found his daughter, the victim girl missing from home. On search he learnt that the accused had taken away the victim to some unknown place.
- 2. On the basis of the FIR, Orang PS Case No. 04/17, under Section 366-A IPC R/W Section 4 of POCSO Act was registered and after completion of

investigation Police submitted charge-sheet under Section 366-A IPC R/W Section 4 of POCSO Act against the accused person Bipin Kurmi.

- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offences under Section 366-A IPC, R/W Section 4 of POCSO Act, Hon'ble Special Judge framed charge there under and the ingredients of charges under Section 366-A IPC, R/W Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 12-03-19, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 09 (nine) witnesses:

PW1- Arun Deka.

PW2- Loken Deka.

PW3- Padum Mahato.

PW4- Victim.

PW5- Malati Mahato.

PW6- Dibakar Hazong.

PW7- Chandra Kanta Basumatary.

PW8- Dr. Chandan Saha.

PW9- I/O. Aniram Boro.

- 5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce evidence.
- 6. Situated thus, the point for determination in the instant case are set up as follows:-

- (I) Whether the accused person kidnapped the victim girl under eighteen years of age with intent that she might be forced to illicit intercourse with you, and thereby committed an offence punishable under Section 366-A IPC ?
- (II) Whether the accused person committed penetrative sexual assault upon Victim who is a minor girl aged about 17 years, and thereby committed an offence punishable under Section 4 of POCSO Act?

#### **DISCUSSION, DECISION AND REASON FOR DECISION:**

- 7. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsel Mr. Jayanta Kr. Brahma.
- 8. Before appreciating the argument put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidences adduced by the prosecution.
- 9. PW1 is Sri Arun Deka. In his evidence PW1 had deposed that in the year 2017, the occurrence took place. On the date of occurrence the father of the victim girl requested PW1 to go with him to the police station. As the victim sent missing therefore, her father had lodged FIR with the police. After about three/four days the victim girl and the accused were found. The police had seized the wearing apparel of the accused including his shoes in presence of PW1. Ext.-1 is the seizure list. Ext.-1(1) is the signature of PW1. In cross-examination PW1 had revealed that he did not know about the incident.
- 10. PW2 is Sri Loken Deka. In his evidence PW2 had deposed that one day in the month of January, 2017 while PW2 went to Orang P.S., the father of the victim informed him that the victim girl went with a boy. PW2 had deposed that police had recovered wearing apparel of the accused and

seized it in presence of PW2 through Ext.-1. Ext.-1(2) is the signature of PW2. In cross-examination PW2 had stated that the father of the victim did not tell him who had taken the victim and how she was taken.

- 11. PW3 is Padum Mahato, informant and father of the victim. In his evidence he had deposed that the occurrence took place in the year 2017. His daughter was taken away by the accused Bipin Kurmi. On the date of occurrence at about 10/10.30 pm accused came to their house and was sitting with the victim inside their house. PW3 scolded them. Thereafter the accused fled away. Next day in the morning he saw that the victim was missing and he lodged an ejahar with Orang P.S. Ext.-2 is the ejahar. Ext.-2(1) is the signature of PW3. After three days the accused and the victim came to police station. Police handed over the victim to PW3. Police seized shoes and coat. Ext.-3 is the seizure list and Ext.-3(1) is the signature of PW3. Material Ext.-1 is the seized article. In cross-examination PW3 had stated that accused is his relative. One day prior to the incident the accused came to their house. He did not hear any hulla at night. Police did not seized birth certificate of the victim from PW3. PW3 could not say the date of birth of the victim. PW3 did not remember what was the age fo the victim at the time of admission in the school. PW3 did not know if both parties had affairs. PW3 did not know if the victim went with the accused for love affairs. PW3 had denied the suggestion that accused did not kidnap the victim.
- 12. PW4 is the victim girl. In her evidence PW4 had deposed that about one year back in the month January, 2017, the incident happened. Prior to the incident she met the accused in village Bedeti while she went there alongwith her maternal uncle Pradip Kurmi. At first the accused proposed to develop love affair with her which she did not accept. Later on, again she met the accused in the marriage ceremony of her maternal uncle. After the marriage ceremony the accused visited the house of PW4 and again proposed her at that time she accepted his proposal and continued love

affair with him for about two months. Later on, she came to know about the wicked character of the accused and she stopped talking with him. the accused tried to flee away with her but she refused to go. On the date of occurrence the accused visited the house of PW4 and father of PW4, having seen both of them together, assaulted PW4. PW4 told the accused that she was assaulted by her father because of him then the accused told her that he would die if she did not go with him. thereafter, he took her forcibly saying that he would take her to is house, but the accused took her to the house of his friend Krishna instead of taking her to his house. Later on, accused took her to his house and in his house he forcibly had sexual intercourse with her. Later on, she was taken to police station. She gave statement before the Magistrate. Ext.-3 is the statement of PW4. Ext.-3(1) is her signature. She went alongwith her father from the Court. In cross-examination PW4 had admitted the suggestion that she did not state before the police that the accused forcibly took her away, they stayed in the house of his friend for seven days and thereafter they stayed in the house of the accused. She had denied the suggestion that she did not state before the police that the accused forcibly had sexual intercourse with her. In cross-examination PW4 had revealed that she went with the accused as she had love affair with him.

13. PW5 is Mrs. Malati Mahato, the mother of the victim. In her evidence she had deposed that at the time of occurrence the victim age was 17 years. The occurrence took place in the month of January, 2017. One day ahead of incident the accused came to their house as a guest. On the next day, PW5 did not find her victim/daughter in the house. PW5 went to the house of the accused person in search of victim. Thereafter, the accused and her victim/daughter came to the police station. PW5 brought the victim from the police station. In cross-examination PW5 had deposed that the accused used to visit their house prior to the incident. Her daughter did not raised alarm at the time of occurrence. She did not remember the date of birth of

the victim. PW5 had denied the suggestion that accused and her daughter had love affair and she concealed the fact.

- 14. PW6 is Dibakar Hazong. In his evidence he had deposed that the occurrence took place on 10-01-17. He went to the P.S. alongwith the father of the victim. Police obtained his signature in the seizure list. Ext.-1 is the seizure list. Ext.-1(4) is the signature of PW6. Cross-examination of PW6 had been declined by the defence.
- 15. PW7 is Chandra Kanta Basumatary. In his evidence he had deposed that the occurrence took place about one year ago. On the day of occurrence he was at his home. At around 8.30 AM he was preparing to go to his school where he worked as a teacher. At that time the informant came to his home and told him to come alongwith him to the Orang PS. While they were going to the Orang PS the informant told him that his victim daughter was missing since the previous night. Thereafter, they reached the Orang PS and the informant lodged an FIR in connection with the incident. Then O/C of Orang PS asked PW7 to put a signature in the seizure list whereby police seized some articles in his presence. Ext.1 is the seizure list. Ext.1(5) is the signature of PW7. In cross-examination PW7 had stated that the victim had love affair with the accused since before the incident. The accused used to come to the house of the informant now and then as being his distance relative. PW7 did not witness as to how the accused kidnapped the victim.
- 16. PW8 is Dr. Chandan Saha. In his evidence he had deposed that on 24.1.17, he examined the victim at Udalguri Civil Hospital and on examination, he found that no sign of recent sexual coitus, pregnancy test negative, no mark of violence seen in private parts, approximate age is 16-17 years. Ext.4 is the medical report. Ext.4(1) is the signature of PW8. Cross-examination of PW8 had been declined by the defence.

- 17. PW9 is I/O, ASI Aniram Boro. In his evidence he had deposed that on 12.1.17 he was posted at Orang PS as ASI of police. On that day informant Padum Mahato lodged an FIR before the Officer-In-Charge, Orang PS and on the basis of which Orang PS case No.4/17 U/S 366A IPC was registered and entrusted PW9 for investigation of the case. In course of investigation, he visited the place of occurrence and recorded the statement of witnesses U/S 161 Cr.P.C., prepared sketch map of the place of occurrence, recovered the victim and arrested the accused who was alongwith the victim. PW9 got the statement of the victim recorded U/S 164 Cr.P.C. before the Magistrate and also produced her for medical examination and obtained her medical examination report. He seized some articles in connection with this case. On completion of investigation PW9 handed over the case diary to O/C of Orang PS for taking necessary action in that respect. Subsequently SI Umesh Bordoloi after perusal of the case diary laid the charge-sheet against the accused Bipin Kurmi U/S 366A IPC added Section 4 of POCSO Act. Ext.1 is the seizure list. Ext.1(6) is the signature of PW9. Ext.5 is the sketch map. Ext.5(1) is the signature of PW9. Ext.6 is the charge-sheet. Ext.6(1) is the signature of SI Umesh Bordoloi which is known to PW9. In cross-examination PW9 had stated that PW4 did not state before him that accused committed rape on her forcibly.
- 18. On careful assessment of the evidences on record, it appears from the testimony of the victim girl that she had love affairs with the accused. Prior to the incident the accused used to visit the house of the victim girl as evident from the evidence of parents of the victim. Though the victim girl had deposed that the accused took her forcibly but in cross-examination she revealed that she went with the accused as she had love affairs with him. As per the evidence of parents of the victim girl, the victim went missing from her home. As per the evidence of PW5, the mother of the victim girl the victim did not raise alarm at the time of occurrence. Thus from the evidence of material witnesses it is clear that the victim eloped with the accused on her own volition. PW1, PW2, PW6 and PW7, who

accompanied the father of the victim girl to the police station, had also not deposed anything to support the prosecution story to make out a case under Section 366 IPC, R/W Section 4 of POCSO Act. Their evidence is to the effect that they were informed by the father of the victim that on the date of occurrence, in the night, the victim went missing from home. With regard to the age of the victim. There is no evidence except the medical opinion of doctor to prove the age of the accused. The father of the victim could not say her date of birth. Though the mother of the victim had deposed that at the time of occurrence the victim was aged about seventeen years, but no birth certificate was produced to substantiate the said facts. Moreover, PW8, the Doctor had found the age of the victim approximately sixteen-seventeen years. But in case of medical evidence with regard to the age of a person there is margin of error of two years in either side and in such a case the benefit always goes in favour of the accused. Thus, if the medical evidence with regard to the age of the victim is taken into account, then the age of the victim should be counted as eighteen years or more than eighteen years. The victim being a major woman is competent to give valid consent and to do things on her own volition. The revelation of the victim in cross-examination that she went with the accused as she had love affairs demolished the credibility of her testimony in examination in chief that the accused forcibly took her away and had sexual intercourse with her.

- 19. In view of above discussion it appears that the prosecution has failed to establish the charges under Section 366-A I.P.C., R/W Section 4 of POCSO Act against the accused person.
- 20. Situated thus the points for determination are decided in the negative and against the prosecution.

### <u>ORDER</u>

- 21. In the result, the accused person Bipin Kurmi is found not guilty under Section 366-A I.P.C., R/W Section 4 of POCSO Act and acquitted of charges under Section 366-A I.P.C., R/W Section 4 of POCSO Act and set with liberty forthwith.
- 22. Judgment signed, delivered and pronounced in the open court today the  $22^{nd}$  day of April, 2019.

#### **Dictated and Corrected**

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar) Addl. Sessions Judge Udalguri

### IN THE COURT OF ADDL. SESSIONS JUDGE:::::::UDALGURI.

# Special (POCSO) 08/2017 APPENDIX

(A)	A) Prosecution Exhibits :		
	Ext1- Seizure list.		
	Ext2- Ejahar		
	Ext3- Seizure list.		
	Ext3- Statement of victim girl.		
	Ext4- Medical report.		
	Ext5- Sketch map.		
	Ext6- Charge-sheet.		
(B)	Materials Exhibits	: Nil.	
(C)	Defence Exhibits	: Nil.	
(D)	Exhibits produced by v	witness: Nil.	
(E)	Court Exhibits	: Nil	
(F)	Prosecution witnesses		
(1)	PW1- Arun Deka.		
	PW2- Loken Deka.		
	PW3- Padum Mahato.		

PW4- Victim.

PW5- Malati Mahato.

PW6- Dibakar Hazong.

PW8- Dr. Chandan Saha.

PW9- I/O. Aniram Boro.

PW7- Chandra Kanta Basumatary.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri.