DISTRICT: DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Special Case No. 44 of 2015

U/S 366 (A) IPC and Section 8 of the POCSO Act Corresponding to G.R. Case No. 1636/2015

State of AssamComplainant

Versus

Dhaneswar Ray ... Accused

Charge framed on : 04-04-2016

Evidence recorded on : 14-06-2016, 10-08-2016, 13-12-2016, 01-04-2017

and 25-04-2017

Statement recorded on : 17-05-2017

Arguments heard on : 26-05-2017

Judgment delivered on : 26-05-2017

Advocates who appeared in this case are:

Shri Maniruz Zaman, P.P. for the Prosecution

Shri Shah Suza Goni & Shri Aminur Rahman, Advocates, for the Defence

J U D G M E N T

1. This case was registered on 20-04-2015, at Golakganj Police Station, under Sections 366(A)/342 of the Indian Penal Code, 1860 (in short "the IPC") and Section 8 of Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act"), based on a First Information Report (in short "the FIR") filed by one Kamala Kanta Ray against accused Dhaneswar Ray.

- 2. The case of the prosecution in brief is that on 18-04-2015, at about 09:00 a.m., at village-Boro Charaikhola, under Golakganj Police Station, the daughter of the informant, who was a student in Class-IX (hereinafter referred to as "the victim girl") went to her school situated at Chariali but, as she did not return home from the school, the informant searched for her and came to know from reliable sources that the accused Dhaneswar Ray had kidnapped her from the PWD road and confined her in a secret place. Therefore, on 20-04-2015, the informant lodged an FIR of incident with the Golakganj Police Station against the accused Dhaneswar Ray.
- **3.** Based on the FIR, the Officer-in-Charge of the Golakganj Police Station registered the case No.241/2015, for commission of offences under Sections 366(A)/342 IPC and Section 8 of the POCSO Act against the accused Dhaneswar Ray and investigated the case.
- **4.** During the course of investigation, the police recovered the victim girl, examined her medically and recorded her statement under section 164 of the Code of Criminal Procedure, 1973 (in short "the Cr.P.C.") through the Magistrate. Statements of several witnesses were also recorded and after completion of investigation, a charge sheet was filed for commission of offences punishable under Sections 366(A)/342 IPC and Section 8 of the POCSO Act against the accused Dhaneswar Ray. Hence, this case.
- **5.** During trial, my learned predecessor framed charges under Section 366(A) IPC and Section 8 of the POCSO Act against the accused. When the contents of the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried.
- **6.** The prosecution, in order to prove its case, examined eleven witnesses. The accused did not examine any witness.
- **7.** In his examination under section 313 Cr.P.C., the accused has denied the prosecution case and has stated that the allegations levelled against him are false and baseless.
- **8.** The points for determination in this case are:-

- I) Whether on 18-04-2015, at about 09:00 a.m., at village-Boro Charaikhola, under Golakganj Police Station, the accused Dhaneswar Ray kidnapped the victim girl from the lawful guardianship of her father with intent to force or seduce her to illicit intercourse with another person?
- II) Whether on 18-04-2015, at about 09:00 a.m., at village-Boro Charaikhola, under Golakganj Police Station, the accused Dhaneswar Ray sexually assaulted the victim girl?
- III) If so, what punishment he deserves?

DECISION AND REASONS THEREOF

9. I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsels for both the sides, give my decision on the above points as follows:-

POINT NOS. I & II

- **10.** As both the points are inter-related, both the points are discussed and decided jointly.
- **11.** The victim girl (PW-1) has deposed that on the day of the alleged incident, at about 01:00 PM, the accused kidnapped her from her school and took her to the house of his uncle's father-in-law and committed sexual intercourse with her. Thereafter, the accused took her to a temple and married her against her will and took her to his house. The police recovered her.
- **12.** In the cross-examination, she has stated that she does not remember the place where the temple in which accused had married her is situated. She did not tell the Chowkidar or any of the teachers of the school about the alleged occurrence. Six persons reside in the house of the father-in-law of the maternal uncle of the accused. She did not tell them about the accused taking her to their house and committing sexual intercourse with her. After the marriage at the temple,

accompanied by one Rajesh Ray, she went to the house of the maternal uncle of the accused. She does not remember when she was born. She failed thrice in the same class. The name of her husband is Atul Ch. Das. After three months of the alleged occurrence and after she attained majority, she was married to him. She has denied the suggestion that her age was 20 years. She has stated before the police that she did not have physical relation with the accused. She came into contact with the accused over phone. As the accused was a daily wage worker, her father was not willing to give her in marriage with the accused. She had returned to her house on the same day she had gone with the accused. She has denied the suggestion that the accused did not commit sexual intercourse with her without her consent.

- **13**. PW-2 Shri Kamala Kanta Roy, the father of the victim girl has deposed that as the victim girl did not return till 06:00 p.m., he informed the police about the matter and the police arrested the accused and the victim girl. After a few days, he had married off the victim girl with another person.
- **14.** In the cross-examination, he has stated that he has filed the case after two days of the alleged incident. On the day of the alleged incident itself, the victim girl had returned to his house. He does not remember what was written in the F.I.R. He has not given any reason for the delay in lodging the F.I.R.
- **15.** PW-3 Shri Dalim Roy, an elder brother of the victim girl has deposed the he does not know anything about the alleged incident as at the relevant time, he was in Shillong.
- **16.** PW-7 Shri Jiten Roy, another elder brother of the victim girl has deposed that he knows the accused. The accused had kidnapped the victim girl when she was proceeding towards her school. His father lodged an FIR of the incident with the police. The police recovered the victim girl along with the accused. He does not know what the age of the victim girl was at the time of the said incident.
- **17.** In the cross-examination, he has stated that at the time of the alleged incident, he was in Shillong. The Investigating Officer did not interrogate him. He cannot say why he has been cited as a witness.
- **18.** PW-4 Shri Dhirendra Nath Adhikary has deposed that he knows the accused and the victim girl. He did not see the alleged incident. He is the next door

neighbour of the accused. One day, at around 02:00 a.m., the mother of the accused called him to their house and when he went to the house of the accused, he saw that the police were taking away the accused and the victim girl. He accompanied the police along with the victim girl. He had heard that accused had kidnapped the victim girl from her house.

- **19.** In the cross-examination, he has stated that the police did not interrogate him.
- **20.** PW-5 Shri Putul Ch. Roy has deposed that he knows the informant, the accused and the victim girl. He does not know about the alleged incident.
- **21.** PW-6 Shri Joyram Roy, a junior assistant of the Birat Nagar Chariali High School has deposed that the victim girl was a student Class-IX of their school. He does not know anything about the alleged incident. The police had seized one certificate of the victim girl from their school vide Ext-3 seizure list. Ext-3 (1) is his signature therein.
- **22.** PW-10 Md. Abu Bakkar Sheikh, an Assistant Teacher of the Birat Nagar Chariali High School has deposed that on 06-06-2015, at about 12:00 noon, the Golakganj Police went to their school and seized a certificate of the victim girl from their school vide Ext-3 seizure list. Ext-3 (2) is his signature therein.
- **23.** PW-8 Raju Roy has deposed that he knows the victim girl, but does not know the accused. He had heard that the victim girl went missing on the way to the school. The police have recovered the victim girl along with the accused.
- **24.** PW-9 Dr. (Mrs.) Rinku Ahmed, the Medical Officer who had examined the victim girl has deposed that she did not find any sign of recent sexual intercourse and assault on the victim girl. Ext-4 is the report prepared by her.
- **25.** In the cross-examination, she has stated that the victim girl was not willing for conducting Radiological test for determination of her age.
- **26.** PW-11 ASI Abdus Sabur, the Investigating Officer of the case is merely a formal witness.

- 27. It is crystal clear from the testimonies of the prosecution witnesses that the victim girl and the accused were recovered from the house of the accused. Further, though it is alleged that the victim girl was kidnapped by the accused, it is crystal clear from her testimony that she had eloped with the accused, went with him to the house of the father-in-law of the uncle of the accused and thereafter, married the accused in a temple. Though, the victim girl has stated that the accused has married her against her will, the same is unbelievable as she did not tell the members of the family of the father-in-law of the uncle of the accused that the accused had kidnapped her or forcibly taken her to their house and also did not tell the priest of the temple where the accused had married her that the accused had forcibly taken her to the temple to marry her against her will. Therefore, it is crystal clear that the victim girl eloped with the accused of her own accord and also married him. Further, though the victim girl has deposed that the accused had committed sexual intercourse with her in the house of the father-in-law of the uncle of the accused, she has not deposed that the accused committed sexual intercourse with her against her will or committed rape on her.
- **28.** Let us now decide whether at the time of the alleged incident, the age of the victim girl was below 18 years and hence, the accused can be held guilty of committing the alleged offences as the consent to sexual intercourse or marriage of the victim girl were no consent in the eye of law?
- 29. The prosecution did not prove what the age of the victim girl was at the relevant time. Though the PW-6 and PW-10 have deposed that the police seized the age certificate of the victim girl from their school vide ext-3 seizure list, the said certificate the prosecution did not exhibit the certificate and the certificate is also not available in the case record. Further, the PW-9 has categorically stated in the cross-examination that the victim girl refused to undergo Radiological test for determination of her age, it cannot be held that at the time of commission of the alleged offence, the age of the victim girl was below 18 years and as such she was a child.

30. In view of the above, the accused cannot be held guilty of committing the alleged offences as there is no evidence to hold that at the time of the commission of the alleged offence, the age of the victim girl was below 18 years. Therefore, the accused must, at least, be given the benefit of the doubt. The point is decided in the negative, accordingly.

ORDER

- **31.** In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has failed to bring home the charges under Section 366(A) IPC and Section 8 of the POCSO Act against the accused Dhaneswar Ray beyond all reasonable doubt. Hence, I acquit him giving him the benefit of the doubt. His bail bond stands cancelled. He is set at liberty forthwith.
- **32.** Signed, sealed and delivered in the open Court on this the 26th day of May, 2017, at Dhubri.

(A. Chakravarty)
Special Judge, Dhubri

Dictated & corrected by me.

(A. Chakravarty)
Special Judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

PW- 1 Mrs. Kalyani Das

PW- 2 Shri Kamala Kanta Roy

PW- 3 Shri Dalim Roy

PW- 4 Shri Dhirendra Nath Adhikary

PW- 5 Shri Putul Ch. Roy

PW- 6 Shri Joyram Roy

PW- 7 Shri Jiten Roy

PW- 8 Shri Raju Roy

PW- 9 Dr. (Mrs.) Rinku Ahmed

PW-10 Md. Abu Bakkar Sheikh

PW-11 ASI Abdus Sabur

2. PROSECUTION EXHIBIT:

Exhibit- 1 Statement of the victim girl u/s. 164 Cr.P.C.

Exhibit- 2 FIR

Exhibit- 3 Seizure list

Exhibit-4 Medical Report

Exhibit-5 Site plan

Exhibit-6 Charge-sheet.

(A.Chakravarty)

Special Judge, Dhubri