

Present: Shri C. Das

Judge, Special Court Baksa, Mushalpur

## **IUDGMENT IN SPECIAL POCSO CASE NO. 22/2019**

u/s 366-A IPC R/W Sec 4 of Pocso Act

State

-versus-

Billal Hussain @ Rehan Ali

....Accused

Appearance:

For the State: Mr. R. Chetry, Public Prosecutor, Baksa

For the accused: Ms. C. Begum, Advocate

Date of recording evidence: 27.06.2019, 25.07.2019, 22.08.2019,

19.09.2019

Date of argument

: 20.11.2019

Date of judgment

: 5.12.2019

#### JUDGMENT

The case of the prosecution in brief, is that on 04.01.2019, the complainant Dipen Nath lodged a FIR before the In-charge of Suagpur Police Outpost, alleging inter-alias that on 31.12.2018, his 17 years old daughter/ victim girl came out of the house to visit the house of her elder sister at Mohoripara village. But later on, his said daughter did not return home. He came to know from the elder sister of the said girl that the victim girl did not visit the house of her elder sister at Mohoripara. Subsequently, he came to know from the accused over phone that the accused kidnapped his minor daughter/ victim as at that time, the accused was working on the road of his village.

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Accordingly, the police registered the Suagpur OP G.D. Entry No. aksa Mushalbur 61 dated 04.01.2019 and forwarded the FIR to the O/C, Goreshwar Police Station and in the meantime, took up the process of investigation. The O/C Goreshwar police station accordingly, registered the P.S. Case No.02/19 and endorsed the I/O to investigate the case. During investigation, I/O visited the place of occurrence and drew its sketch map along with recording statement of the witnesses. The I/O recovered the victim girl and sent her for medical test and for recording her statement u/s 164 Cr.PC. The I/O arrested the accused person and sent him to jail. The I/O collected the medical report of the victim along with her school certificate. The I/O ascertained that the age of the victim girl as 16 years. At the end of the investigation, I/O having found a



prima-facie case well established, submitted the charge-sheet against the accused to face trial in the court.

- 3. The accused when appeared in the court, he was furnished with the relevant copy of the case. After hearing the parties and on perusal of material on record, the charge u/s 366-A IPC R/W Sec 4 of Pocso Act was framed against the accused. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried.
- The prosecution during the trial, examined as many as, 8(eight) witnesses including the I/O and M/O to support its case. Thereafter, the accused was examined u/s 313 Cr.PC where the accused denied all the incriminating circumstances appeared against him in the evidence. The accused however, declined to adduce any defence witness. The argument of the parties was heard at length and the evidence on record is perused carefully.

### POINT TO BE DETERMINED:

- Whether on 31.12.2018 at about 10.30 am. at Kalabari under Goreswar Police Station, the accused induced the victim girl under the age of 18 years, to go from her home with the intent that she may be forced or seduced to illicit intercourse with the other persons;
- 6. Whether on the same day, time and place above, the accused committed penetrative sexual assault upon the victim girl who is the minor daughter of the informant, Dipen Nath,

#### **DECISION AND REASON THEREFORE:**

- In this case, the allegation of the prosecution against the accused is on two counts. One is that, he induced the minor victim girl to go from her home with the intent that she may be forced or seduced to illicit intercourse with other persons as well as, the accused committed penetrative sexual assault upon her.
- The prosecution examined the informant Deben Nath as PW-1. He stated that on the fateful day, at about 10 am, the victim girl was missing from the house. The victim girl told him that she will visit the house of her sister at Mohoripara. Since the victim did not return till evening, he started searching for the girl but could not trace her out. He stated further that at that time of the occurrence, the accused was residing at his village and as such, he suspected the accused for the occurrence. On next day, the accused informed him over phone that the accused took away the victim girl. Therefore, he informed the police. He filed the ejahar vide Exbt-3. PW-1 proved the Exbt-3. Saksa Mushalour According to PW1, the victim was 17 years of age at the time of occurrence and she was in Class-X. He submitted the school certificate of the victim to the police.
  - In the cross-examination, PW-1 stated that he filed the ejahar after 3 days of the occurrence. He stated that the accused resided in a rented

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house near his residence. The victim girl and the family members had talking terms with the accused person.

- 10. The prosecution examined the victim girl as CW-1. She stated that on the fateful day, at night, the accused threatened her over phone to go with him or not. Hence, on next day, at about 10 am, the accused took her by threatening to Guwahati by a bus. Thereafter, on the same day, at night, the mother of the accused sent both of them to an unknown destination by train. Accordingly, she reached Kokrajhar town. The accused left her at Kokrajhar in his relative's house. After 4 days, the uncle of the accused brought her back to Guwahati. Soon after reaching Guwahati, the police apprehended her along with the accused and brought to home. The police sent her for medical examination but she refused. Exbt-1 is her medical report with her signatures thereon. She recorded her statement in the court vide Exbt-2 with her signature. She stated that she was 16 years old at the time of occurrence. The accused committed sexual intercourse forcefully with her for one day.
- In the cross-examination, CW-1 stated that when the repairing work of the road of her locality was going on, she came into contact with the accused. Earlier, the accused resided in the house of her aunt. Since then, there was visiting terms started by the accused to her house. She further stated that after meeting the accused, she started to dislike her parents. Since after leaving with the accused, she had no physical relation with the accused. One day, the accused forced her to have physical relation but she did not allow it.
- 12. PW-2 Smt. Dalimi Nath is the mother of the victim girl. She corroborated the version of the victim as well as PW-1. PW-2 stated that on the fateful day, at about 11 am, the victim girl came out of the house to visit the house of her cousin sister namely; Ms. Junali Nath. Thereafter, till 6 pm, the victim girl did not return to home. Hence, she enquired about the victim girl from Ms. Junali Nath who reported her that the victim girl did not visit her home. She searched for the victim girl. After 4 days, the accused informed her over phone that the accused took away the victim girl. Hence, PW-1 filed the ejahar before the police. After few days, the police recovered the victim. She saw the accused along with the victim girl at the police station. The police sent the victim for medical test vide Exbt-1 with her signature. The victim girl was 15 years of age at the time of occurrence and was in Class-IX. On her enquiry, the victim told her that the accused committed physical relation with her for one day. She submitted the school certificate of the victim vide M.R.Exbt-1.
- In the cross-examination, PW-2 stated that the accused came to her contact when he lived at her locality on a rented house while working on a road. The accused used to visit her home prior to the occurrence.

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PW-3 Prabin Nath also supported the version of the informant. He deposed inter-alias that the accused was staying in his house in connection Baksa Mushalpur with working on the road of his locality. The accused eloped the victim girl while she went to the house of her sister. After 4 days, the accused called over phone that the accused brought the victim girl. Accordingly, the ejahar was filed. The police recovered the victim girl with the accused. The victim girl was 15-16 years old at the time of occurrence. The victim told him that the accused committed sexual intercourse with her.



- 15. PW-4 Hriday Nath supported the version of the informant. He stated that on the fateful day, in the morning, the victim went to the house of her sister but the victim did not return home till evening. Hence, search for the girl was started. After 2 days, the accuse informed over phone that he took away the victim girl. Hence, the case was filed. The police recovered the victim with the accused. According to PW-4, the victim was 16-17 years old at the time of occurrence and was in Class-X.
- 16. In the cross-examination, PW-4 denied that the suggestion that he did not state to the police earlier that the accused informed over phone after 2 days that the accused took away the victim girl. PW-4 stated that the accused used to stay in his village in connection with construction work of a bridge. The victim girl is his cousin sister.
- 17. PW-5 Jugeswar Nath supported the version of the informant. He stated that he has been working as Head Master of Kalapara High School since 1997. The informant approached him for school certificate of the victim girl. Hence, he issued a provisional certificate of the victim girl on 7.01.2019 when the victim was in Class-X and her date of birth as per school register was 01.02.2003. M.RExbt-1 is the school certificate of the victim. M.R.Exbt-2 is the register containing the date of birth of the victim. M.RExbt-3 is the statement of the student for appearing in the SEBA examination where the name of the victim appeared at Serial No. 24.
- 18. In the cross-examination, PW-5 stated that he cannot issue school certificate of the victim in prescribed form since she was continuing her study in his school.
- 19. PW-6 Dr. Urmi Devi Chaudhury stated that on 07.01.2019 at SMK Hospital, Nalbari at about 12.05 pm, she examined the victim girl in connection with police requisition in presence of Dalimi Nath(PW2). Her impression is that the victim refused medical examination and her age is about 16 years but below 18 years. Accordingly, PW-6 submitted the medical report vide Exbt-1 with her signature.
- 20. The evidence of I/O vide PW-7 Dipak Sharma is that on 04.01.2019, at Suagpur OP, the informant filed the FIR before him. Accordingly, he took up the investigation. He visited the place of occurrence, drew the sketch map vide Exbt-4 with his signature. He examined the witnesses. He searched for the victim girl along with the accused but could not trace them out. Later on, he recovered the victim girl with the accused from Guwahati and brought them back. He sent the victim girl for medical examination and to record her statement u/s 164 Cr.PC. He arrested the accused and collected the medical report of the victim and he complete the investigation and filed charge-sheet against the accused vide Exbt-5 with his signature.

Judge Epi Court Baksa Mushalbur<sub>21.</sub>

'21. In the cross-examination, I/O stated that the FIR does not disclose the cause of delay in filing the ejahar. He did not examine Ms. Janali Nath. He examined PW3 prior to recovery of the victim girl. I/O gave the details of contradictions of the witnesses of the prosecution which will be discussed in their respective versions.



- Thus, from the evidence of the prosecution witnesses, it appears that the victim was recovered with the accused after few of the occurrence. It is already found from the evidence on record that the victim is the minor girl. It is not denied by the parties that the accused was known to the victim and her mother prior to the occurrence since the accused used to visit the house of the victim. It appears that there is no dispute that CW1 is minor girl under the age of 18 years.
- 23. Learned Public Prosecutor submitted during the argument of the case that all the witnesses of the prosecution along with the testimony of CW1 disclosed that the accused kidnapped the victim girl from the lawful custody of her guardian and committed sexual assault upon her. Hence, the prosecution has able to bring home the charge against the accused. He urged therefore, to record a conviction order against the accused in accordance with law.
- 24. Per contra, learned counsel appearing for the accused, opposed the above argument of learned Public Prosecutor and submitted that the evidence of the prosecution failed to meet the requirements of offence of kidnapping of the victim as per law. He submitted that the recovery of the victim from the custody of the accused does not simple establish that the accused committed the offence u/s 366-A IPC unless all the ingredients of the said provisions are fulfilled in true letter and spirit. It is his argument that it is a simple case of elopement where CW1 out of love affairs, went with the accused and thereafter returned to home voluntarily. Moreover, according to learned counsel for the accused, the evidence of CW1 itself disclosed that the accused did not commit any sexual assault upon her. Therefore, the accused cannot be held in the offence as alleged by the prosecution.
- 25. In the case of offence u/s 366-A IPC, Hon'ble Gauhati High Court in **Golapi Bibi and anr. vs. State of Assam, in 2004(2) GLR 338**, held inter-alias that from a bare perusal of the section, it appears that there are three essential ingredients to constitute the offence of procurement of a minor girl under section 366-A IPC. Those are: (1) the victim girl

a minor girl under section 366-A IPC. Those are: (1) the victim girl must be induced by the accused; (2) she must be a minor under the age of 18 years and (3) she must be induced by the accused person to go from a place or to do any act with the intent that such girl may be or knowing that it is likely that, she will be, forced or seduced to illicit intercourse by another person. Amongst those, 'inducement' has not been defined anywhere in the Panel Code. In the ordinary dictionary meaning i.e. as per "Oxford Advanced Learner's Dictionary", the words 'induce' and 'inducement' mean as under:

"Induce : to persuade or influence sb to do sth". "Inducement : a thing that persuades sb to do sth". Again in "Black's Law Dictionary" the word 'inducement' is defined as under :

"Inducement : the act or process of enticing or persuading another person to take a certain course of action."

In "Law Lexicon, the Encyclopedic Law Dictionary", the words 'induce' and 'inducement' are "Induce": prevail on; to bring about to persuadable. An "inducement" may amount to a Bargain".

"Inducement: Allurement. It is not easy to give an exhaustive definition, within reasonable terms, of exactly what is meant by the words. 'allurement or inducement' that legally operate to constitute an invitation to enter the premises of another. Mere temptation does not form such an inducement."

Keeping in view the legal provision and definition of the words "induce" and "inducement" fore-noted, now let us appreciate the deposition of the witnesses to see as to whether those three ingredients of Section

Judge Spi Court Baksa Mushalbur



366-A IPC as well as the meaning of the words, 'induce' and 'inducement' have primarily been fulfilled and satisfied in the case in hand.

- 26. The evidence of CW1 who is the victim girl shows that the accused threatened her leave her house and accordingly, the accused took her away without the knowledge of PW1 and 2 on next day. However, it appears from the evidence of PW1, 2, 3 and 4 that it was the accused who informed PW1 that the accused took away CW1 with him. The contradiction as pointed by defence through I/O in case of omission of PW2, 3 and 4 u/s 161 CrPC are found to minor in nature since they are not eye-witnesses of the occurrence.
- 27. It appears that CW1 told PW1 and 2 that she went to house of Ms. Junali Nath who is her cousin sister. But from the evidence of PW1 and 2, it makes clear that CW1 told a lie of such visit to her sister's house. Instead, CW1 went with the accused. Therefore, the intention of CW1 was to go with the accused. Moreover, if the threatening of the accused over phone to CW1 amounts to inducement, then, she being a minor, influenced her by the accused to go with him. So far it appears that the recovery of CW1 was made from the accused and the version of PW1, 2, 3 and 4 confirms it. Hence, the ingredient of offence of procurement of minor girl like CW1, is established. But the evidence on record, does not disclose the intent of the accused that he had intention of forcing or seducing the victim girl for illicit intercourse with another person. In absence of evidence to fulfill the required ingredients of law, the accused cannot be punished for offence u/s 366-A IPC.
- 28. In case of offence of penetrative sexual assault to CW1, there must be penetration by the accused. But the version of the witnesses are found discrepant. If PW2, 3 and 4 stated that CW1 told that the accused committed sexual intercourse with her once forcefully during her captivity with the accused, it is found contradicted by CW1 in her cross-examination. The version of CW1 is contradictory to her own version. In the examination-inchief, she stated that the accused once committed sexual intercourse with her forcefully. It appears from the cross-examination of CW1 that she did not allow the accused to commit sexual intercourse with her. Thus, the evidence of victim girl itself discloses that there was no sexual intercourse with her by the accused. Hence, there is doubt if the accused committed such offence to CW1. In absence of reliable evidence of the victim girl, the accused cannot be implicated in the offence u/s 4 of Pocso Act.
- 29. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Hence, the accused is held not guilty u/s 366-A IPC r/w Section 4 of Pocso Act. The accused is therefore, acquitted and set at liberty. His bail bond shall however, remain in force u/s 437-A CrPC. Forward a copy of judgment to the District Magistrate, Baksa, Mushalpur u/s 365 CrPC. This court in the liberty of the offence of the case by the DLSA. Baksa. Inform the Secretary of DLSA, Baksa accordingly.
  - 30. Given under the hand and seal of this court on this 5<sup>th</sup> day of December 2019.

Dictated and corrected by:



C. Das, Judge Special Court Baksa Mushalpurur

Judge Special Court Baksa, Mushalpur Baksa, Mushalpur

Transcribed by : B. Brahma, Steno



# **ANNEXURE:**

## List of prosecution witness:

PW1 ... Deben Nath ... complainant

CW1 ... the victim girl(named is withheld)

PW2 ... Smti. Dalimi Nath

PW3 ... Prabin Nath

PW4 ... Hriday Nath

PW5 ... Jogeswar Nath

PW6 ... Dr. Urmi Devi Choudhury ... m/o

PW7 ... Dipak Sarma ... I/o

# List of defence witness:

Nil

### List of documents exhibited:

Ext.1 ... medical report

Ext.2 ... statement of the victim girl u/s 164 CrPC

Ext.3 ... FIR

Ext.4 ... sketch map

Ext.5 ... charge-sheet

Judge, Special Court Baksa, Mushalpusur