## IN THE COURT OF ADDITIONAL SESSIONS JUDGE,

SONITPUR, ASSAM

### Spl POCSO No. 44 of 2019

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

State of Assam

**-**VS-

Sri Raghu Ghatowar

..... 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. A.P. Kurmi, learned Legal Aid Counsel

Dates of recording Evidence: 04.02.2020, 18.02.2020

Date of Argument

: 18.02.2020.

Date of Judgment

: 18.02.2020.

#### <u>JUDGMENT</u>

1. The prosecution case in brief is that on 03.09.2019 the informant namely, Smti Dupadi Bhuyan lodged an 'ejahar' with the I/C Borgang Police Outpost under Behali Police Station stating inter alia that on 31.08.2019 at about 4.30 PM, when she was away from her house the accused came to her house and eloped her 14-year-old daughter (name is withheld). She stated that as she had too remain busy in search of her daughter, it caused delay in lodging the FIR.

Receiving the same, the police registered a case and investigated the matter. After Addi. Sessions Judy r/w Section 4 of the POCSO Act, 2012.

Addi. Sessions Charian 3. In due course, the accused investigation, the police submitted charge sheet against the accused person u/s 363 IPC

3. In due course, the accused person was produced from judicial custody to face trial. The copies of the relevant documents were furnished to him. As he expressed his inability to engage a counsel of his choice to defend him, Sri AP Kurmi, learned Legal Aid Counsel was appointed to defend the accused at the expense of the State. Upon hearing both the sides

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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 the informant, Dupadi Bhuyan as PW 1 and the victim as PW 3 along with another witness. Looking into the evidence as adduced by all these witnesses and taking note of the medical examination report of the victim, 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. The examination of the accused u/s 313 CrPC is dispensed with. The case was thereafter argued by both the sides.



#### Points for determination

- Whether the accused on the day of the alleged occurrence kidnapped the victim who is a minor girl under the age of 18 years from the lawful guardianship of her mother Dupadi Bhuyan?
- Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the said victim, who is below the age of 18 years?

## Discussion, Decision and Reasons thereof

- 5. PW 1 is the informant, Dupadi Bhuyan. She stated that the incident took place about 3/4 months back. Her daughter had gone to witness 'Manasa Puja' at Behali. Later, when she returned from her work place, she did not find her daughter in her house. She searched for her for five days and as the victim did not return, she informed the police, who thereafter recovered the girl. She proved her FIR as Ext. 1. She further stated that her daughter is not mentally sound and she regularly remain out of her house and uses to stay in others house. According to her, she had named the accused on being told to her by her other daughter, Phulmoni. She stated that she is not aware of the actual age of the victim.
  - pW 2, Sunita Bhuyan is the elder sister of the victim. She stated that the accused had taken her with him on his bicycle when she went to witness the 'Manasa Puja'. Her mother informed her about the incident. Later, police recovered the victim from Itakhuli but the accused had fled away. The victim told her later that the accused had taken her with him. The victim stated to her that the accused did not misbehave her.
- 7. Thus from the evidence of PW 2, we find that the victim had stated to her that the accused did not misbehave her. She too has no knowledge about the actual age of the victim.

Addi. Sessions Judge.

8. PW 3 Phulmoni Bhuyan, another elder sister of the victim stated that the victim is a mentally ill person. According to her, the accused took her with him. She remained silent with regard to any misconduct the accused made on the victim. In her cross, she stated that the victim who was with her had fled away from her way to their mother's house and therefore, she left her there.

9. PW 4 is the alleged victim. She stated that the accused on that day took her to her sisterin-law's house wherefrom her elder sister, Phulmoni took her to her house. When Phulmoni entered into a shop on the way, the accused came and took her forcibly on her bicycle. She stayed in the house of his elder sister where they stayed for three days. She proved her statement u/s 164 CrPC as Ext. 2. In her cross, she stated that the accused did not established any physical relationship with her.

- 10. As noticed above, we have found from the evidence of PW3 that the victim fled from the way to her mother's house which shows that she herself had accompanied with the accused on her own wish. The evidence of PW4 that the accused took her forcibly therefore is not trustworthy. Further, the evidence of PW 2 and the PW 4-the victim shows that the accused did not establish any physical relationship with her. When we take judicial notice on the medical examination report of the victim, we find that the doctor examining the victim did not find any sign of penetrative sexual assault on her.
- 11. Thus from the evidence on record, we do not find any material to convict the accused on the offences charged against him. As such he is acquitted from the offences charged against him and set at liberty forthwith. As the accused has faced trial from custody the Jail Authority to be directed to release him immediately, if he is not required any other case. 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 February, 2020.

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

> > Addl. Sessions Judge Biswanath Chariali, Sonitour

### **ANNEXURE**

## Witnesses examined by the Prosecution:

PW1- Smti Dupadi Bhuyan

PW2- Smti Sunita Bhuyan

PW3- Smti Phulmoni Bhuyan

PW4- 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.

Addl. Sessions Judge Biswanath Chariati, Sonitput