IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

<u>Spl. POCSO Case No. 42/2018</u> u/s 363 IPC / Sec4 of POCSO Act,2012

State of Assam

-VS-

Sri Rabi Praja

..... Accused person

Present:

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

Additional Sessions Judge, FTC, cum Special Judge.

Biswanath Chariali, Sonitpur.

Advocates Appeared: -

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

For the defence

: Mr. P.P. Borah, learned Advocate.

Date of recording Evidence: 22.07.2019.

Date of Argument

: 22.07.2019.

Date of Judgment

: 22.07.2019.

JUDGMENT

- 1. The prosecution case in brief is that on 31.07.2018 the informant namely, Sri Debananda Soni lodged an FIR with the OC, Biswanath Chariali PS stating inter alia that on 28.07.2018 at about 8 p.m., his 14-year-old daughter was found missing from their house. On the next day, he could learn from her friend Majuri Bagh that his daughter had love affair with the accused Rabi Praja. When he went to the house of the accused, he could learn from the mother of the accused that her son had fled with a girl and could know from her that they were in the house of his elder sister situated at Line No. 9 of Dikorai Tea Estate.
- 2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted charge sheet against the accused Robi Praja u/s 366-A IPC r/w Section 4 of POCSO Act.
 - 3. The accused in due course appeared before this court, wherein the copies of the relevant documents were furnished to him. Taking note of the materials furnished u/s 173 CrPC and upon hearing both the sides on the point of charge, as this court found grounds for presuming that the accused person had committed offences u/s 363 IPC/ 4 of POCSO Act, the charges were accordingly framed against him, which on being read over and explained,

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he pleaded not guilty.

4. During trial, the prosecution examined the informant and the alleged victim as PW 1 and PW2 respectively. Looking into the evidence as adduced by both these vital witnesses, the prosecution declined to examine the remaining witnesses contending that further evidence would not strengthen its case. Taking note of the evidence of both these witnesses, as no incriminating evidence was found, the prosecution evidence was closed and the examination of the accused person u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

Points for determination

- i) Whether the accused on the day of the alleged occurrence kidnapped the said victim who is a minor girl from the lawful guardianship of her father-the informant?
- ii) 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, namely, Sri Debananda Sona. He stated that about a year back, the victim fled away with the accused. He approached the parents of the accused for recovery of his daughter. But as they did not help him, he lodged the FIR, which he proved as Ext. 1. Later, police recovered his daughter. He further stated that his daughter was 19-20 years old at that relevant time. According to him, his daughter later had told him that she had gone with the accused by mistake and he did not misbehave her.
- 6. PW 2 is the alleged victim. She stated that she on her own wish had eloped with the accused as she was in love with him. She thereafter stayed in the house of the elder sister of the accused. Later she realized and returned back to her father's house. She also stated that the accused did not misbehave her and did not take her with him forcibly. She proved her statement recorded u/s 164 CrPC as Ext. 2. She in her cross stated that the accused is innocent.
- 7. Thus from the evidence of both these vital witnesses we do not find any evidence 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 of Sec. 437-A CrPC is not complied with after taking note of the materials 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 22nd day of July, 2019.

Additional Sessions Judge, FTC, cum Special Judge,

Biswanath Chariali, Sonitpur, Assam.

ASSI, Separation of Bismana South

ANNEXURE

Witnesses examined by the Prosecution:

PW1-Sri Debananda Sona PW2-Victim

Exhibits proved by the prosecution witnesses:

Ext.1- FIR

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

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

Addi. Sessions Judge Biswapan Chanaii, Schique