# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge,

Dhemaji,

## JUDGMENT IN SPL.(POCSO) CASE NO. 36 (DH) 2018.

U/S 366/342/323 of IPC R/W Sec.8 of POCSO Act.

#### The State of Assam

- Versus -

## Shri Kiran Dutta,

S/O Kula Dutta,

Vill. No.2 Nagaon (Ganak Gaon)

P.S. Dhemaji

Dist.- Dhemaji.

.....Accused Person

#### Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri B.Gogoi,

Advocate

.....For the Accused

Date of prosecution evidence : 07-12-2018.

**Date of argument** 

: 18-01-2019.

**Date of Judgment** 

: 04-02-2019.

102/20P)

### JUDGMENT

- The prosecution case, in brief, is that on 21-05-2018 complainant- Smti Lili Phukan lodged an ejahar with Dhemaji Police Station alleging interalia that on that day i.e. on 21-05-2018 at about 10 AM while her (complainant's) daughter -Smti Queen Phukan was coming to the Moridhal College from her house at Simen CHapari by train and while she got down from the train at Moridhal Rly. Station, the accused-Kiran Dutta met her on the railway station and forcibly took her on his bike to his house and kept her confined and asked her whether she loves her or not and he also tried to kill her by fastening her neck with a bed-sheet. It is also alleged in the ejahar that the accused assaulted her by fist-blow and kick, and also torn her wearing clothes. However, her daughter (victim) managed to escape from the clutch of the accused.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person u/s 366(A)342/323 of IPC R/W Sec. 8 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 366/342//323 of IPC R/W Sec. 8 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statement of the accused person was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of their case.

### 4. **Point for determination**:

(1) That you, on 21-05-2018 at about 10 AM at MoridhalRailway Station under Dhemaji Police Station, you kidnapped/abducted Smti

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Queen Phukan, a minor girl aged about 17 years on a bike with intent that she might be compelled to marry you against her will, or that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.

- (2) That, you on the same day at same time wrongfully confined the said Queen Phukan, a minor girl aged about 17 years in your house at NO.2 Na-gaon, Moridhal under Dhemaji Police Station and thereby you committed an offence punishable u/s 342 of IPC.
- (3) That, you on the same day at same time in your house at NO.2 Na-gaon, Moridhal under Dhemasji Police Station, voluntarily caused hurt to Smt. Queen Phukan, a minor girl aged about 17 years and thereby you committed an offence punishable u/s 323 of IPC.
- (4) That, you on the same day at same time in your house at NO.2 Na-gaon, Moridhal committed sexual assault on Smti Queen Phukan, a minor girl aged about 17 years and thereby you committed an offence punishable u/s 8 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

#### **Discussion, Decision and Reasons thereof**

#### Appreciation of evidence :

6. **PW1** Smt. Queen Phukan is the victim girl. She stated that the complainant is her mother. She knows the accused. The incident took place about 6/7 months back. On the date of occurrence she was going to college along with her friends by train. When she got down at Moridhal train station, she met accused Kiran Dutta. He also studied in their college. He told her that he will drop her at college on his bike. She got on to his bike and accused drove the bike, but he changed the direction. Instead of taking her



to the college he took her to his house. She raised objection and then he took her back to college. Her parents came to know about the action of the accused and they lodged complaint. However, she told her parents that accused did not physically abuse her. After filing of the case they decided not to proceed further against the accused as he did not do any tangible harm to her. They are now maintaining cordial relation with the accused.

In cross-examination PW1 stated that she has no objection if the accused is acquitted in this case.

7. **PW2** Smti Lili Phukan stated that she is the complainant. She knows the accused. Victim is her daughter. The incident took place about 6/7 months back. On the date of occurrence her daughter was going to college along with her friends by train. When she got down at Moridhal train station, she met accused Kiran Dutta. He also studied in her college. He told her daughter that he will drop her at college on his bike. She got on to his bike and accused drove the bike, but he changed the direction instead of taking her to the college, he took her to his house. She raised objection and then he took her back to college. They came to know about the action of the accused and she lodged complaint. However, she told them that accused did not physically abuse her. After filing of the case they decided not to proceed further against the accused as he did not do any tangible harm to her daughter. They are now maintaining cordial relation with the accused. Ext.1 is ejahar. Ext.1(1) is her signature.

In cross- examination PW2 stated that she has no objection if the accused is acquitted in this case.

8. From the discussion of the evidence on record, it appears that in this case the victim- Queen Phukan and the complainant-Smti Lili Phukan were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that the incident took place about 6/7 months back. On

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the date of occurrence the victim was going to college along with her friends by train. When she got down at Moridhal Railway Station, she met accused Kiran Dutta. He also studied in her college. He told her daughter that he will drop her at college on his bike. She got on to his bike and accused drove the bike, but he changed the direction instead of taking her to the college, he took her to his house. She (victim) raised objection and then he took her back to college. Parents of the victim came to know about the action of the accused and the mother of the victim (PW2) lodged complaint. However, the victim told her parents that accused did not physically abuse her. After filing of the case they (PWs-1 and 2) decided not to proceed further against the accused as he did not do any tangible harm to her i.e. the victim. They are now maintaining cordial relation with the accused. Ext.1 is ejahar lodged by the complainant and Ext.1(1) is her signature. In cross- examination, both the witnesses (PW1 & PW2) stated that they have no objection if the accused is acquitted in this case. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

- 9. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. It is also seen from the evidence of the PWs- 1 and 2 that both the parties have compromised the case outside the Court and hence they have not deposed against the accused. I find that the prosecution has totally failed to prove the charges u/s 366/342/323 of IPC read with Sec.- 8 of the POCSO Act against the accused.
- 10. In view of the above, I find the accused-**Kiran Dutta** not guilty u/s 366/342/323 of the I.P.C. read with Section-8 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.

Special Judge,
Dhemail.

11. Judgment is pronounced in open Court.

12. Given under my hand and seal of this Court on this the 4th day of February/2019.

Special Judge, Dhemaji.