# IN THE COURT OF THE SESSIONS JUDGE, AT DIBRUGARH ::

Present: Mrs. S.P. Khaund, Sessions Judge, Dibrugarh.

#### **PCSO Case No. 30 of 2016**

Under Section 366 of IPC read with Section 4 of POSCO Act.

State

-Versus-

Sri Jaga Nath Mech ......Accused person.

Appearance :

For the State : Smti. S. Akhtar, Ld. Addl. P.P.

For the accused : Sri M.P Todi Ld. Defence Counsel.

Date of evidence recorded: 6.5.17, 7.6.17.

Date of argument heard : 7.06.17. Date of judgment : 7.06.17.

#### **JUDGMENT**

- 1. The prosecution case in brief is that on 12.4.16 at about 9 a.m, Jaga Nath Mech (hereinafter the accused) enticed the victim 'X', promising her to marry and eloped with her from the Digboi Duliajan Road.
- 2. An ejahar to this effect was lodged by the victim's father, Sri Pradip Saikia (hereinafter the complainant), which was registered as Joypur P.S Case No.33/16, under Section 366 A of the Indian Penal Code(IPC in short).
- 3. A.S.I Drishti Kumar Das was entrusted with the preliminary investigation. The Investigating Officer (I.O in short) swung into action and recovered the victim and forwarded her for medical examination. She was forwarded to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (Cr.P.C in short). The I.O

went to the place of occurrence, prepared the sketch map. The I.O also recorded the statements of the witnesses.

- 4. On finding prima-facie materials charge-sheet was lodged against the accused under Section 366 A of the IPC read with Section 4 of Protection Of Children from Sexual Offences Act, 2012 (POSCO Act in short).
- 5. On appearance of the accused, copies were furnished. After hearing both the sides a formal charge under Section 366 of IPC was framed and read over and explained to the accused. The accused abjured the guilt with claimed innocence.
- 6. To substantiate the stance, the prosecution adduced the evidence of four (4) witnesses. On the circumstances arising against him, the answers of the accused person to the questions under Section 313 of Cr.P.C. were that of total denial.
- 7. I have heard the arguments forwarded by the Learned Counsel for both the sides.

#### 8. **Points for determination**

- (i) Whether on 12.04.16 the accused induced 'X' to go with him in order that she may be seduced to illicit intercourse?
- (ii) Whether the accused committed penetrative sexual assault on the victim 'X'?

#### 9. **Decision thereon and the reasons for the decision**

The complainant Pradip Saikia testified as P.W.2 that he came to know the accused person after the incident. During Bihu on 13.4.16, his daughter Lahi Saikia went with her friends to Kenduguri Village at Joypur. She went with her friends to the accused person's house. At that time the accused person's neighbour informed his wife about his daughter's visit to the accused person's house.

Then, the police was also informed and the police apprehended the accused with his daughter and took them to Joypur Police Station. He was informed from the Joypur Police Station about the incident. Then, he was asked by the police to lodge an FIR as his daughter was recovered from the accused person's house. Exhibit 1 is the ejahar and Exhibit 1(1) is his signature. The police forwarded his daughter for medical examination and also before the Magistrate for recording her statement. At present his daughter is 20 years.

- 10. The complainant's testimony does not at all implicate that the accused is complicit and there is no evidence that the accused induced the victim to go with him. There is no evidence of sexual assault on the victim.
- 11. Similarly, the victim 'X' i.e. Smti. Lahi Saika testified as P.W.3 that she knows the accused person. Last year, during Bohag Bihu, she went to Joypur Kenduguri Village along with her friends. The accused person was known to her and as his daughter was not well, she went to his house for a visit. At that time, his wife was not at home. The accused asked her to attend to his daughter who was not well as he wanted to go out. So, she stayed back in the accused person's house to take care of his daughter. When it was evening she returned to her friend's house. On the next day in the morning she went to the accused person's house as he requested her to visit him. Meanwhile, the accused person's wife arrived and she informed the police on suspicion. The police came and apprehended her and the accused person and took them to the Police Station. Her father was informed from the Police Station and her father went and lodged this case against the accused person. During investigation the police recorded her statement and forwarded her to the Magistrate for recording her statement and to the AMCH for medical

examination. She refused the medical examination by the doctor. Exhibit 2 is her statement before the Magistrate and Exhibit 2(1) and Exhibit 2(2) are her signatures.

- 12. When the victim herself has not implicated the accused, this case is without a substratum. The Learned P.P has submitted in her argument that the victim has stated before the Magistrate that there was physical relationship between the accused and the victim. Exhibit 2 is the statement of the victim and the Exhibit 2(1) and 2(2) are her signatures.
- 13. At this juncture it is apt to mention that the victim has stated that she is 20 years and the alleged incident took place last year which implies that the victim was 19 years at that time. Her father has also testified as P.W.2 that the victim is 20 years at present. When the victim has not incriminated the accused that he has committed sexual assault against her will and without her consent, the benefit of doubt goes to the accused person.
- 14. The P.W.1 Sri Binon Mech is a neighbour of the accused person. He testified that the complainant and the victim are not known to him. He did not have any knowledge about the incident.
- 15. Similarly, P.W.4 Sri Shantanu Bora testified that he did not have any knowledge about the incident in his testimony.
- 16. Apart from this allegation there is no evidence against the accused.
- 17. Culling out the evidence, it is held that the victim herself did not implicate that the accused is complicit. There is no evidence that the accused induced her to go with him and forcefully committed penetrative sexual assault on her. The other witnesses did not implicate

the accused at all. The contents of the FIR is contrary to the testimony of the witness P.W.2.

- 18. In view of my foregoing discussions, it is thereby held that the prosecution has failed to prove beyond all reasonable doubt that the accused kidnapped the victim and induced her to go with him and committed penetrative sexual assault upon her. The accused Jaga Nath Mech is acquitted from the charges under Section 366 of IPC read with Section 4 of POCSO Act on benefit of doubt and is set at liberty forthwith.
- 19. Judgment is signed, sealed and delivered in the open court on the  $7^{th}$  day of June, 2017.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.

## **APPENDIX**

## **Prosecution witnesses**

PW-1 :-Sri Binon Mech,

PW-2 :- Sri Pradip Saikia (complainant).

PW-3 :- Smti. Lahi Saikia.

PW-4:- Sri Shantanu Bora.

## **Defence witnesses**

Nil.

## **Court witnesses**

Nil.

## **Exhibits**

Ext-1 :- FIR.

Ext-1(1) : - Is the signature of the complainant Sri Pradip

Saikia.

Ext-2 :- Statement of the victim before the Magistrate.

Ext-2(1) & 2(2) :- Are the signatures of the victim Lahi Saikia.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.