## **IN THE COURT OF SPECIAL JUDGE AT BARPETA**.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

# JUDGMENT IN SPECIAL POCSO CASE NO. 35 OF 2019 (G.R.No.- 1143/2018) Sarthebari P.S. Case No. 91 of 2018

#### **State of Assam**

-versus-

Jahedul Islam @ Jaidul Ali S/O Late Jalal Uddin, Resident of Dhumarkur, P.S. Barpeta, District - Barneta Assam

District - Barpeta, Assam ...... <u>Accused.</u>

### **APPEARANCES:**

For the State : Mr. Lalit Ch. Nath, learned Public Prosecutor, Barpeta.

For the Accused : Mr. Abdul Kayem, learned Advocate, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365/366A IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 29.06.2019
Date of Prosecution evidence : 30.07.2019
Date of Statement u/s 313 CrPC : 30.07.2017,
Date of Argument & Judgment : 30.07.2019

# J U D G M E N T

1). The prosecution case, in brief, is that vide **F.I.R**. dated 13.03.2018, the informant Ajmat Ali (P.W.2), who is the father of the victim girl alleged, interalia, that on 12.03.2018 at about 02:00 AM, the accused person namely Jahedul Islam @ Jaidul Ali alongwith other persons kidnapped his minor victim daughter, aged about 16 years and

took her at unknown place. It was also alleged in the FIR that on the next day, of the alleged incident, at about 8:00 AM, four men came to his house and gave proposal for marriage of his said daughter with the accused person. In-charge, Balapara Police Out-Post forwarded the F.I.R. to Sarthebari PS after entering the same as Balapara OP GDE No.222 dated 13.03.2018.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Sarthebari Police Station, the same was registered as **Sarthebari P.S.** Case No 91/2018 under Sections 366(A)/506/34 of IPC.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the above named accused Jahedul Islam @ Jaidul Ali under Section 366(A) of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.299/2018, dated 31.12.2018.

- **2).** My learned Predecessor-in-office received the case record alongwith the case diary of the case. Accused was summoned. On appearance of accused, copy was furnished to him by the undersigned.
- 3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charge was framed by the undersigned against the accused under Sections 365/366A of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, which was read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.
- **4).** During the course of trial, **02 [Two]** number of witnesses including the victim and informant were examined on behalf of the prosecution to prove the charge under **Section 365/366A of IPC**

# read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

The Prosecution Witnesses was closed, as per prayer by learned Public Prosecutor, Barpeta. Statement of the above named accused person was recorded under Section 313 CrPC. Accused person denied alleged incriminating materials against him and claimed himself to be innocent. Accused person declined to adduce evidence in his defence.

- 5). I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta, for the State as well as Mr. Abdul Kayem, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 365/366A of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether on 12-03-2018 at about 2:00 AM within the jurisdiction of Sarthebari P.S., District Barpeta, kidnapped Ajmina Begum, minor daughter of informant Ajmat Ali, from her home with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 of IPC?
- (ii) Whether on the aforesaid date, time and place, kidnapped minor daughter of above named informant, with intent that she might be compelled to marry against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and thereby committed an offence punishable under

#### Section 366A of IPC?

(iii) Whether on the aforesaid date or thereafter, committed penetrative sexual assault upon the minor victim, daughter of the above named informant and thereby committed an offence punishable under Section 4 of the Protection of Children From Sexual Offences Act, 2012?

#### **DISCUSSION, DECISIONS AND REASONS THEREOF:**

**7).** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

The Victim [P.W.1] has deposed that informant is her father and she knows the accused person. She used to have telephonic conversation with the accused prior to the incident and had entered into love affairs with the accused person. On the relevant date, accused came to her house at night hours and took her to his house. She stated that accused kept her for one day in his house and on next day, accused took her to Howly. Accused kept her in the house of one person. Then, Police caught both of them at night from Rajakhata.

Police sent her to Doctor for her medical examination and Police got her statement recorded under Section 164 CrPC by learned Magistrate. She exhibited her statement as Ext.1 and Ext.1(1), 1(2) & 1(3) are her signatures.

**In her cross-examination**, she stated that she herself called the accused and went out alongwith him from her house. Then, public caught both of them.

She admitted her age as 16 years. Her father lodged this case when he found her missing from her house.

She stated that accused did not force her to go with him. She gave her statement before learned Magistrate as told by Police. **8). Ajmat Ali [P.W.2]** deposed in his evidence that he lodged this case. Victim is his daughter. Incident took place before 1 ½ years. He stated that he did not find her victim daughter in his house in the early morning and searched the victim, but he did not find her. After that, he lodged this case. On the next day, Police recovered his victim daughter from Rajakhat. Police informed him.

Then, victim daughter told him that she went the accused as per her telephonic conversation with the accused.

He exhibited the FIR as Ext.2 and Ext.2(1) is his signature.

In his cross-examination, he stated that he gave the name of accused out of suspicion in the FIR and nothing happened more than what he has stated above in his evidence.

**9).** From a close perusal of the evidence, it is seen from the evidence of the victim that accused did not kidnap her (P.W.1). She willingly went out with the accused person from her house. P.W.1 admitted in her evidence that she had love affairs with the accused person. On the relevant date, she called the accused and went out with him. Then public caught both of them and handed over her to her parents.

P.W.1 stated that her father lodged the case when he found her missing from her house.

Victim girl (P.W.1) clearly stated that accused did not force her to go with him and she gave her statement before learned Magistrate as told by police.

Thus, it is crystal clear from the version of the victim girl, that accused did not kidnap the victim girl. This case was lodged with a false story by her father against the accused person.

Moreover, the informant namely Ajmat Ali (P.W.2) also deposed in his cross-examination that **he gave the name of accused out of suspicion in the FIR.** 

- **10).** Hence, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion.
- 11). Consequently, the charge under Sections 365/366A of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 is held to be not proved against the accused Jahedul Islam @ Jaidul Ali beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Jahedul Islam @ Jaidul Ali is acquitted on benefit of doubt under Sections 365/366A of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012
- 12). In the result, accused Jahedul Islam @ Jaidul Ali is acquitted of the charge under Sections 365/366A of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stand discharged.

**13).** Given under my hand and seal of this Court on this **30**<sup>th</sup> **day of July, 2019**.

Dictated & corrected by me.

Sd/-

Special Judge, Barpeta.

# APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Asmina Begum, the victim P.W.2 = Ajmat Ali, the informant.

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim,

Ext.1(1),1(2) & 1(3)= Signatures of the victim,

Ext.2 = Ejahar,

Ext.2(1) = Signature of Ajmat Ali, the informant.

(C) **Defence witnesses**:Nil.

(D) **Defence Exhibits**: Nil.

(E) **Court witnesses**:Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.