#### IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

**SPECIAL (POCSO) CASE NO.** :-70 OF 2017

( Under Section 363 of the IPC read with

Section 4 of the POCSO Act )

**Present** :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

**Tezpur** 

**Prosecutor** State of Assam

-vs-

1. Sri Krishna Tanti **Accused** 

> Son of Late Mahabir Tanti Resident of Tin Khoria TE Police Station - Dhekiajuli,

Dist: - Sonitpur, Assam.

1. Prabhu Nath Mahanand

Son of Late Santi Mahannand Resident of Tin Khoria TE Police Station - Dhekiajuli, Dist: - Sonitpur, Assam.

Date of framing Charge 22/06/2018

Date of Recording Evidence 06/09/2018 & 15/09/2018

Date of examination of accused u/s

313 Cr.P.C

15/09/2018

Date of Argument 15/09/2018 :-

Date of Judgment 15/09/2018

Counsel for the Prosecution Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Accused :- Smti D.M. Sinha, Advocate.

Page 1 Spl POCSO Case No. 70 of 2017

#### **JUDGMENT**

- 1. In this case the accused Sri Krishna Tanti and Sri Prabhu Nath Mahanand are put for trial for the allegation of charge u/s 363 of the IPC and 4 of the POCSO Act.
- 2. The factual matrix of the case in brief is that on or about 4 p.m. of 04-12-2017, informant's minor daughter Miss X went to a shop to bring mustard oil and washing soap but did not return. The informant came to know that while his daughter went to bring articles from a shop, accused persons restrained her and forcefully took her in a bicycle and kidnapped her, kept her in the tea estate and whole the night she has been raped for several times. As informant's daughter did not return so through out the night, he searched his daughter but could not find her. On 05-12-2017 at about 11 a.m. their daughter came to his house and narrated the whole incident. Hence this prosecution case.
- The ejahar was filed by the complainant Kartik Tanti before the O/C of 3. Dhekiajuli PS on 05-12-2017. On receipt the ejahar the O/C Dhekiajuli P.S. registered the case, vide Dhekiajuli PS Case No. 1103/17 under Section 363 of the IPC read with Section 4/6 of POCSO Act. On completion of investigation, the O/C of Dhekiajuli PS sent up the case for trial against the accused persons under Section 363 of the IPC read with Section 4/6 of POCSO Act.
- 4. On being appeared the accused persons before this Court, after hearing both parties, framed charge under section 363 of the IPC read with Section 4/6 of POCSO Act, 2012 against the accused persons and particulars of the charge was read over, explained to the accused to which they pleaded not guilty and claimed to be tried.
- To substantiate the case prosecution examined as many as 4 (four) numbers of witnesses which includes the informant, victim and other witnesses. Learned counsel for the accused submitted to close the evidence on the ground that the statement of complainant and victim no way supported the prosecution case so it would be futile to examine the other witnesses. I have heard the learned Special Public Prosecutor. Considering the statement made by complainant, victim and other material witnesses, I think that it would be futile to examine the other witnesses. Even if examined the other witnesses,

Page 2 Spl POCSO Case No. 70 of 2017

prosecution case would not develop. Speedy trial is the right of the accused persons. Considering the materials and facts as narrated above, the prosecution evidence is closed.

- **6.** After completion of prosecution evidence accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before them for explanation where they denied the evidence and allegation and declined to give defence evidence.
- **7.** I have heard the argument put forward by the learned counsels of both sides.

## 8. The points for decision in this case are that:

i) Whether the accused on or about 04-12-2017 at about 7 p.m. at Natur line, Tinkhuria Tea Estate under Dhekiajuli Police station kidnapped Miss X (13 years of age) from lawful guardian of complainant and committed penetrative sexual assault on Miss X (victim) in the whole night at Tinkhuria Tea Estate and thereby committed an offence punishable under Section 4 of POCSO Act?

#### Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 10. PW -1 Sri Kartik Tanti, the complainant of this case, has stated before the Court that he knows both the accused namely Prabhu Nath and Kirshna Tanti. Victim is her daughter. At the relevant time she was 13 years old. The incident took place in the month of December, 2017. In the evening of the day of incident, he sent his victim daughter to bring mustard oil and soap to a shop but she did not return home. They vigorously searched her. Again she went to the shop where she had went, But did not find her. Next day morning his victim daughter came to his house. While he enquired she told that she went to the house of Sanjay as she afraid of them. Some of the public of their garden told that both the accused persons took his daughter in a cycle to the side of garden. Then he filed the ejahar before the Dhekiajuli Police station. The ejahar was written by a scribe as per instruction of some boys. Then he put signature thereon. Ext. 1 is the ejahar and Ext. 1(1) is his signature. Then police came

and sent his daughter to medical examination. Thereafter, she was sent for recording her statement u/s 164 Cr.P.C. to the learned court. Police also recorded his statement.

In cross-examination, he admitted that the ejahar was not read over to him. Accused persons are their relatives. Accused persons were also accompanied him while searching his victim daughter. Accused persons are innocent. Due to misunderstanding he filed this case. He cannot say, the exact age of his victim daughter.

**11.** PW-2 Sri Pradip Gowala, stated that he knows both the accused namely Prabhu Nath and Kirshna Tanti. He also knows the complainant and victim. At the relevant time she was about 13 years old. The incident took place on 04-12-2017. In the next day of incident, Manager of the Tea Estate called him and asked him to compromise the matter. Police recorded my statement.

In cross-examination, he admitted that both complainant and accused persons are his neighbours.

**12.** PW- 3 Sri Bikram Munda stated that he knows both the accused namely Prabhu Nath and Kirshna Tanti. I also know the complainant and victim. At the relevant time she was about 13 years old. The incident took place on 04-12-2017. In the next day he came to know from the victim that both the accused persons kidnapped her and took inside the garden and committed misdeed. Misdeed means rape.

In cross-examination, he admitted that he stated about the age of the victim on suspect. He does not know if she is above 18 years of age.

PW- 4, the victim Miss X, stated that Complainant is her father. She knows both the accused namely Prabhu and Krishna. The incident took place about 2/3 months ago at night. At the relevant time she went to the shop to bring oil and washing soap. The money which she had taken i.e. one hundred rupees note was missing so she could not be able to bring the oil and washing soap. Out of fear she did not go to my house, instead she went to her aunty's house. In the next morning, she went to her house. During that time local

Spl POCSO Case No. 70 of 2017
Page 4

people of their line raised hulla and asked her where she had been to, she told them that she had been to shop to bring the oil and washing soap but the money which she had taken was missing. Therefore, without bringing the said materials, she went to her aunty's house and stayed there for the night out of fear. Thereafter, at the instruction of local public her father filed the case. Police came and recorded her statement, sent her to the hospital for medical examination and to the learned court for recording her statement u/s 164 Cr.P.C she put her thumb impression on some papers.

In cross-examination she admitted that when she returned to home, her father assaulted her and asked her why she misused the said hundred rupee note and did not return to home. During that time she raised alarm and local people arrived there. She told the gathered people that she has lost her hundred rupee note which was given by her father to purchase oil and washing soap. Then local people asked her father to put signature in a prepared paper. After instituting the case, police came, recorded her statement, also sent her to the doctor and thereafter she had been sent to the learned court for recording her statement u/s 164 Cr.P.C. At the instruction of local public she gave statement before the learned Magistrate out of fear. She has no objection if the accused persons are enlarged on acquittal.

- **14.** These much is the evidence of the prosecution case. Defence plea is total denial while his statement was recorded u/s 313 Cr.P.C.
- **15.** Here in this case, the charge against the accused persons are framed u/s 363 of the IPC read with section 4 of POCSO Act.

To prove the charge u/s 363 of the IPC, the prosecution must prove that -

- i) That the person in question was at the time of the offence in India.
- ii) That the accused conveyed that person beyond the limits of India.
- iii) That he did so without the consent of that person, or of some person legally authorized to consent on that persons' behalf.

Spl POCSO Case No. 70 of 2017 Page 5

For kidnapping from guardianship prove – (i) that the person in question was at the time of the offence a minor under sixteen years of age (if a male), or under eighteen years of age (if a female); or that such person was of unsound mind.

- **16.** Here in this case neither the victim nor complainant stated any of the ingredients of the alleged offence u/s 363 of the IPC as such, the charge u/s 363 is failed.
- **17.** Similarly, to bring the charge under section 4 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove the ingredients mentioned in section 3 of the POCSO Act.

Section 3 of the POCSO Act quoted as follows:

<u>Section 3. Penetrative Sexual assault,</u> - A person is said to commit "pemetrative sexual assault" if -

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body o the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- **18.** Here in this case, the victim herself stated that at the relevant time she went to bring oil and washing soap. The money which she had taken i.e. one hundred rupees note was missing so she could not be able to bring the oil and washing soap. Out of fear she did not go to my house, instead she went to her aunty's house. In the next morning, she went to her house. During that time local people of their line raised hulla and asked her where she had been to, she told them that she had been to shop to bring the oil and washing soap but the

<u>Spl POCSO Case No. 70 of 2017</u>
Page 6

Page **7** of **8** 

money which she had taken was missing. Therefore, without bringing the said

materials, she went to her aunty's house and stayed there for the night out of

fear. Thereafter, at the instruction of local public her father filed the case.

Police came and recorded her statement, sent her to the hospital for medical

examination and to the learned court for recording her statement u/s 164

Cr.P.C. In cross-examination she admitted that she made statement before the

police and Magistrate at the instruction of local public out of fear. She has no

objection if the accused persons are enlarged on acquittal.

From the statement of victim and complainant, none of the ingredients

of the alleged charge u/s 4 of the POCSO Act is proved.

19. In view of the aforesaid discussions, I have no hesitation to hold that

the prosecution has categorically failed to prove the alleged charge against the

accused beyond any reasonable doubt. Hence, the accused, namely Sri Krishna

Tanti and Sri Prabhu Nath Mahanand are acquitted on benefit of doubt and set

them at liberty forthwith.

20. The liabilities of the bailors are hereby discharged.

Given under my Hand and Seal of this Court on this the 15th day of 21.

September, 2018.

(A.K. Borah) SPECIAL JUDGE,

**SONITPUR: TEZPUR** 

Dictated and corrected by me

(A.K. Borah) **S**PECIAL JUDGE,

**SONITPUR :: TEZPUR** 

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

# **APPENDIX**

## **Prosecution Witness**

1. Prosecution Witness No.1 :- Sri Kartik Tanti, informant

2. Prosecution Witness No.2 :- Sri Pradip Gowala,

3. Prosecution Witness No.3 :- Sri Bikram Munda

4. Prosecution Witness No.4 :- Victim.

### **EXHIBITS.**

Exhibit 1 :- Ejahar

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR

<u>Spl POCSO Case No. 70 of 2017</u>