# IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

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

Special Judge, Dhemaji,

# JUDGMENT IN SPL.(POCSO) CASE NO. 11 (DH) 2018.

U/S 366/376(3) of IPC R/W Sec.4 of POCSO Act.

#### The State of Assam

- Versus -

# 1. Shri Biswajit Mallo @ Paju,

S/O Late Robi Mallo,

Vill. No.2 Kadamtola,

P.S. Silapathar,

Dist.- Dhemaji (Assam)

.....Accused Person.

### Appearance:

Shri A. Fogla, Public Prosecutor

.....For the State

Shri N. Buragohain, Advocate

.....For the Accused

**Date of prosecution evidence** 

: 18-01-2019.

**Date of argument** 

: 21-02-2019.

**Date of Judgment** 

: 02-03-2019.

### JUDGMENT

1. The prosecution case, in brief, is that on 12-12-2014 complainant- Santi Sakharu filed a complaint before the learned Chief Judicial Magistrate, Dhemaji stating interalia that on 11-12-2014 in the evening time his minor daughter-Miss 'X' (**Real name withheld**), a student of Class-IX, returned home from her school i.e. Ishwar Sagar High School after appearing her examination, and while his daughter came out from her home towards the road after having her meal, she was missing. It is stated in the ejahar

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that on search, they came to know that the accused-Biswajit Mallo kidnapped his daughter by inducement and kept her confined in an unknown place. It is also stated in the complaint petition that the accused used to threat his daughter over telephone to take away her. On receipt of the complaint, learned C.J.M., Dhemaji forwarded the complaint to the Officer-in-Charge of Silapathar Police Station for registering a case and investigate the same under proper section of law and to submit F/F.

- 2. On receipt of the complaint, police registered a case and started investigation and on completion of investigation Police submitted Charge-sheet against the accused person u/s 366 of IPC R/W Sec. 4 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 366/376 (3) of IPC read with Sec. 4 of POCSO Act against accused- Biswajit Mallo @ Paju. The charges were readover and explained to the accused to which he pleaded not guilty. The prosecution, in order to prove its case, examined two witnesses. At the closure of the prosecution evidence statements of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

### 4. Points for determination:

- (1) That you, on 11-12-2014 in the evening at No.2 Kadamtola Gaon under Silapathar Police Station, you kidnapped/abducted Miss 'X', a minor girl aged about 13 years by inducement 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, on the same date at same time and thereafter, you committed rape on Miss 'X', a minor girl aged about 13 years having

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sexual intercourse against her will and thereby you committed an offence punishable u/s 376 (3) of IPC.

- (3) That, on the same day at same time and thereafter, you committed penetrative sexual assault on Miss 'X', a minor girl aged about 13 years and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

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

6. **PW1** Shri Santi Sakharu stated that he is the complainant. He knows you (the accused). Victim Miss 'X' is his daughter. The incident took place in the year 2014. His daughter had eloped with the accused without their knowledge and consent. They also got married. He lodged complaint before Police against the accused. However, the accused and his daughter are living together as husband and wife and out of wedlock, a child was born to them. Exhibit-1 is the ejahar and Ext-1(1) and 1(2) are his signatures.

Defence declined to cross-examine (PW1).

PW2 Miss 'X' stated that the complainant is her father. Accused Biswajit Mallo is her husband. She had love affair with the accused and she eloped with him without the knowledge and consent of her parents. Hence, her father lodged complaint before police. Now, she is staying in her husband's house and out of their wedlock, a child was born. At the time of occurrence, her age was above 18 years. She further stated that she had gone with the accused voluntarily.

Defence also declined to cross-examine (PW2).

# **Appreciation of evidence:**

8. From the discussion of the evidence on record, it appears that in this case the complainant-Santi Sakharu and the victim- Miss 'X' were examined as P.W-1 and PW2 respectively. In their evidence this two vital witnesses stated that accused Biswajit Mallo @ Paju had love affair with the

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victim girl (PW2) and she eloped with the accused on her own accord without knowledge and consent of her parents. So, the parent of the victim lodged complaint before police. Now, the accused and the victim are living together as husband and wife in the house of the accused and out of their wedlock, a child was born to them. It is stated by the victim (PW2) that at the relevant time of occurrence, she was above 18 years of age. 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 charge u/s 366/376 (3) of IPC read with sec. -4 of the POCSO Act against the accused-BIswajit Mallo @ Paju.
- 10. In view of the above, I find the accused-**Biswalit Mallo** @ **Paju** not guilty u/s 366/376 (3) of the I.P.C. R/W sec. 4 of POCSO Act. Accordingly, the accused is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 11. Judgment is pronounced in open Court.
- of March/2019. Given under my hand and seal of this Court on this the 2<sup>nd</sup> day

(S. Das) Spanialidadge, Dibinalinaji.