#### IN THE COURT OF SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, <u>Sivasagar</u>.

# <u>Spl. (P) Case No. 06 of 2018 U/S 366 IPC & Sec. 4 of POCSO Act 2012</u> (Arising out of Namtola P.S. Case No.14/2015)

State of Assam

-Vs-

Sri Poklu Gowalla ...... Accused

**APPEARANCE:** 

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. Aditya Bora, Advocate

(Legal Aid Counsel)

Date of framing Charge : 17.02.2018
Dates of Evidence : 09.03.2018
Date of Argument : 09.03.2018
Date of Judgment : 09.03.2018

#### JUDGMENT

- 1. Prosecution case, in brief, is that on 18.03.2015, informant Sri Parashuram Robidas lodged an FIR with O/C, Namtola P.S. alleging, inter alia, that on 15.03.2015, at about 9.00 PM his 14 years old daughter victim 'M' (name withheld) went to toilet and did not return till date. It is also alleged that the informant suspects that accused Poklu Gowalla has kidnapped the victim.
- 2. On this FIR, Namtola P.S. Case No. 14/2015, U/S 366 (A) IPC was registered and started investigation. During investigation, victim was medically examined and her statement was recorded in the court U/S 164 Cr.P.C. Accused was arrested and subsequently released on bail.

- 3. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused U/S 366 (A) IPC.
- 4. On receipt of the case on commitment, vide order dated 28.07.2017, the case was transferred to the court of Id. Addl. Sessions Judge, Circuit Court, Charaideo at Sonari for disposal. Due to non appearance in pursuant to summons, learned Additional court was pleased to issue NBWA for compelling attendance of the accused and accordingly on 10.01.2018 accused Poklu Gowalla was produced under arrest before the court of Id. Addl. Sessions Judge, Charaideo at Sonari and was remanded to jail custody. Vide order dated 24.01.2018, Id. Addl. Sessions Judge, Charaideo at Sonari has opined that as the offence brought against the accused falls under POCSO Act, 2012, case should be tired by Special Judge and sent back the case record to this court for disposal. Thus on receipt of the record, on 03.02.2008, this case was registered as Spl. (P) Case No. 6/2018, and after hearing both the sides, charge has been framed U/S 4 of POCSO Act, 2012 and Section 366 IPC against the above named accused person to which he pleaded not guilty.
- 5. During trial, prosecution side has examined only two witnesses including the informant and the victim. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- 6. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. Aditya Bora, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

#### POINTS FOR DETERMINATION ARE

7. (I) Whether on 15.03.2015, at about 9.00 P.M, accused kidnapped or abducted the victim 'M'? If so, what was the intention of the accused person behind such kidnap/abduction?

(II) Whether on 15.03.2015 and thereafter, the victim 'M' was subjected to penetrative sexual assault by the accused?

## **DECISION AND REASONS THEREOF**

- 8. PW 1 Sri Parashuram Rabidas, father of the victim M in his evidence deposed that his daughter eloped with the accused without informing me. Due to non-finding her after 3 days he lodged FIR at Namtola PS. Police recovered his daughter from Bimalapur and handed over to him. On his asking, victim has stated that having love affairs with the accused, she eloped with the accused and stated her willingness to stay with Paklu Gowalla. He consented to their relation. Presently victim is living at the residence of accused as wife and husband and have one child. In his cross-examination he admitted that he lodged the FIR on suspicion of kidnap by accused due to her missing. He did not want to prosecute this case any further and has no objection in acquittal of the accused from this case.
- 9. PW-2 the victim M in her evidence deposed that her present age is about 21 years. Having love affairs with accused Poklu Gowalla, 15.03.2015 as pre-planed, she eloped with him and performed marriage at Tingali bam Mandir and started living with the accused at his residence. On the matter of his missing, his father filed this case without consulting her. Thereafter Namtola PS recovered us from Bimlapur PS. Police took her for medical check up and also in court. She gave statement in court. Exbt. 1 is her statement given in court. Exbt. 1(i) to 1(iii) are her signatures. Presently she is residing at her matrimonial home. She has one child through the accused. In her cross-examination she admitted that accused did not put force on her for going with him. She on her own went with him.
- 10. From the evidence on record it appears that though in the FIR allegation of abduction has been leveled against the accused Poklu Gowalla, but during evidence, P.W. 1, the informant is totally silent on this aspect. From the

evidence of P.W.1, the father of the victim it reveals that due to non-finding his daughter victim 'M' in his house he lodged the FIR. However police recovered the victim from Bimalapur and handed over to him. On asking she informed him that having love affairs with the accused, she on her own eloped with the accused and stated her willingness to stay with Poklu Gowalla. P.W. 1 admitted that presently he has accepted the relation of the victim with the accused and presently victim is living at the residence of accused as wife and husband and have one child. P.W.2, the victim while adducing evidence has mentioned her age as 21 years. From her evidence it appears that she had love affairs with the accused and on the date of incident, i.e. on 15.03.2015 as preplanned, she eloped with the accused and performed marriage at Tingalibam Mandir and started living with the accused at his residence. In cross she admitted that accused did not put force on her for going with him. She on her own eloped with the accused. Accused is innocent and prayed for acquittal of the accused from this case.

- 11. On the next charge regarding commission of penetrative sexual assault, from the evidence of P.W. 2 the victim it reveals that on the alleged date of occurrence she was major in age and while giving evidence in court she was silent about physical relationship without her consent.
- 12. From the above evidence as discussed, it is clear that there was no material whatsoever regarding abduction or of penetrative sexual assault (rape) by the accused.
- 13. Considering above discussion, I am of the opinion that prosecution has failed to prove the ingredients of charge U/S 366 IPC and Section 4 of POCSO Act against the accused Poklu Gowalla. As such, accused Poklu Gowalla is acquitted from the charges U/S 366 IPC and Section 4 of POCSO Act, 2012 and set at liberty forthwith.
- 14. Issue release order to the Jail Supdt. of District Jail, Sivasagar

forthwith.

15. As the accused is in Jail, no order is passed U/S 437 A Cr.P.C.

16. Considering the nature of the case, I am of the opinion that it is not a fit case for referring the matter to DLSA for granting compensation U/S 357-A Cr.P.C.

17. Learned legal aid counsel is entitled for his professional fees from DLSA as per rules.

18. Send a copy of the judgment to learned District Magistrate, Charaideo U/S 365 Cr.P.C.

19. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 9th day of March 2018 Sivasagar.

Special Judge, Sivasagar:

### <u>APPENDIX</u>

1. Prosecution witnesses:

P.W.1 – Sri Parashuram Robidas (Informant)

P.W.2 - Victim 'M'

2. <u>Defence witnesses</u> - None

3. Court witnesses - None

4. Exhibits by prosecution -

Exbt.1 - Statement of the victim U/S 164 Cr.P.C.

Special Judge, Sivasagar: