## IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

# Special (POCSO) Case No.-86/2018

U/S-366/342 IPC, r/w Section-4 of the POCSO Act.

State

- Versus -

Amrajul Hoque

: Accused.

#### Present:

Md. A. Rahman, AJS Special Judge, Nagaon.

# **Appearance & particulars :-**

For the State : Mr. M.J. Neog, Ld. Special Prosecutor.

For the accused persons : Mr. M. Ahmed, Ld. Advocate.

Charge framed on : 10/10/2018.

Evidence recorded on : 06/12/2018, 31/08/2019,

18/09/2019.

Date of recording 313 Cr.P.C. statement: 18/09/2019.

Date of Argument : 18/09/2019.

Date of Judgment : 18/09/2019.

### **JUDGMENT**

- 1. The instant case arose out of Juria P.S. Case No.-180/2018 registered u/s-4 of the POCSO Act.
- 2. Complainant Mofij (actual name withheld), Village- Balikatia, lodged a written Ejahar (FIR) on 24/05/2018 at Juria Police Station alleging inter alia that accused Amrajul Hoque kidnapped his minor daughter "Miss. X" (13 years) inducing her to visit the house of her uncle. Thereafter, he took her to the house of his friend at Tezpur. He forcibly committed rape on his minor daughter for 5(five) days. Getting the telephonic information from his victim daughter, the complainant recovered her from Dhekiajuli Bhanga Mandir. Although the village sitting was held, but accused Amrajul denied his guilty. On 25/05/2018, accused Amrajul Hoque accompanied by Hamidul, Ikramul and Inamul armed with dao and lathi trespassed into his house and droved away him and his family members by threatening them with dire consequences. Hence this case.
- 3. On the basis of the FIR, the O/C of Juria Police Station registered the aforesaid case. After due investigation, police submitted Charge Sheet.
- 4. In due course, the record was transferred to this Special Court for disposal. After appearance of the accused before this court, both sides were heard on the point of charge. Considering the materials in the Case Diary, charges u/s-366/342 IPC, r/w Section-4 of the POCSO Act were framed, read over and explained to the accused person. He denied the charges and claimed to be tried.

- 5. During the course of trial, prosecution examined the complainant, the victim and her aunt. Considering the evidence of the said vital witnesses, further prosecution evidence was closed. The accused person was examined u/s-313 Cr.P.C. The defence plea is of total denial.
- 6. I have heard Mr. M.J. Neog, learned Special Prosecutor as well as Mr. M. Ahmed, learned counsel for the defence. The evidence on record is thoroughly and minutely scrutinized.

## 7. Now the points for determination are as follows:-

- (i) Whether accused Amrajul Hoque on 29/04/2018 kidnapped "Miss. X", the minor daughter of the complainant from his house with an intent or knowing that she would be forced / seduced to illicit intercourse with him and thereby committed an offence punishable u/s-366 IPC?
- (ii) Whether the accused having kidnapped the said victim from Village- Balikatia, wrongfully confined her at Bhanga Mandir, Dhekiajuli in Sonitpur district and thereby committed an offence punishable u/s-342 IPC?
- (iii) Whether accused Amrajul Hoque committed penetrative sexual assault upon "Miss. X" and thereby committed an offence punishable u/s-4 of the POCSO Act ?

### **DECISIONS AND REASONS THEREOF**

8. Before appreciation of evidence, it is plausible to see the relevant evidence of the witnesses.

9. PW-1 Firoja Khatun has deposed that the complainant is her brother-in-law (husband's elder brother). Victim "Miss. X" (PW-3) is her niece. According to her, about 8 / 9 months back, the accused took PW-3 to Dhekiajuli Bhanga Mandir of Sonitpur district. Thereafter, he accompanied by PW-2 went there and brought back the accused and PW-3. PW-2 insisted the accused to marry PW-3; but he declined. Hence. The case was filed.

During cross-examination, PW-1 has made it clear that PW-3 is the cousin sister of the accused. They used to live in the same homestead. PW-2 lodged the case as the accused declined to marry his daughter (PW-3).

10. PW-2 who is the complainant as well as the father of the victim (PW-3) deposed that about one year back, the occurrence took place. He was at Jorhat. After 4 days of occurrence, his daughter (PW-3) informed him over telephone that the accused had taken her to Bhanga Mandir of Sonitpur district. Thereafter, he accompanied by PW-1 went and brought back PW-3. Accused was keeping his daughter at the house of his friend. He insisted the family members of the accused to compromise; but they did not agree.

In cross-examination, he has clearly admitted that accused Amrajul Hoque is his own nephew. He has stated that previously also his daughter accompanied the accused to Monipur. He has also stated that he lodged the case after  $1 \frac{1}{2}$  months of the occurrence.

11. PW-3 being the victim is the witness of this case. She has specifically stated that about 1  $\frac{1}{2}$  year back, she voluntarily accompanied with his cousin Amrajul Hoque to Dhekiajuli. She was staying with the wife of the friend of the accused. She went with him to

Dhekiajuli as her mother quarreled with her. She has also clearly stated that she did not speak the truth before the Magistrate. Ext.-1 is her statement before the Magistrate and Ext.-1(1) to Ext.-1(3) are her signatures.

- Now, upon perusal of the evidence of the said witnesses, it is 12. clear that PW-3 and the accused are cousin brother and sister. They used to live in the same campus. It is proved from the evidence of PW-3 that she voluntarily accompanied the accused to Dhekiajuli following quarrel with her mother. She has not stated anything that she was sexually abused by the accused, rather she stated that she was staying with the wife of his friend. There is absolutely no evidence to show that the accused induced / forced her to accompany him to Bhanga Mandir, Dhekiajuli of Sonitpur district. When PW-3 has not stated anything against the accused regarding any sexual assault, presumption u/s-29 of the POCSO Act cannot be drawn. In view of the above, it is held that the prosecution has failed to prove the case against the accused. Hence, the accused is acquitted on benefit of doubt. Since the accused is in jail custody, he shall be released on furnishing PR Bond of Rs.10,000/- (Rupees ten thousand) which shall remain in force for 6(six months). Inform the Superintendent of Jail, Nagaon.
- 13. This Special Case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 18<sup>th</sup> day of September, 2019.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

## APPENDIX :-

## Oral evidence :-

PW-1 Musstt. Firoja Khatun.

PW-2 Md. Mofij. (Actual name withheld)

PW-3 Miss. X. (Actual name withheld)

# Documentary evidence :-

Ext.-1 Statement of the victim recorded u/s-164 Cr.P.C.

Defence side did not adduce any evidence.

Special Judge, Nagaon.