

**IN THE COURT OF THE SPECIAL JUDGE (F.T.C.), LAKHIMPUR,
NORTH LAKHIMPUR.**

P R E S E N T

Sri P.C. Kalita, A.J.S.,
Special Judge (F.T.C.),
Lakhimpur, North Lakhimpur.

Special Case No.06/2019.

U/s-366 of I.P.C. & Sec.4 of POCSO Act.

State of Assam

-Versus-

Sri Anupam Das @ Papu,..... Accused.

A P P E A R A N C E

For the State : Mr. M.Gogoi, Ld. Special P.P.

For the Accused : Mr. B. Das, Ld. Advocate.

Date of evidence : 17.05.2019, 03.06.2019, 29.04.2019,
06.06.2019.

Argument heard on : 06.06.2019.

Judgment delivered on : **06.06.2019.**

J U D G M E N T

1. The prosecution case, inter-alia, in brief, is that on 30.08.2017, informant Smti Dipali Bonia lodged an ejahar at Narayanpur P.S. alleging that on 26.7.2017 at about 12:00 mid-day, her daughter i.e. the prosecutrix, who was a student of Madhabdev College, studying in Higher Secondary Class (Science), had been kidnapped by the accused person namely, Sri Anupam Das, from the road in front of her house.

2. On receipt of the ejahar, the O/C, Narayanpur P.S.

registered a case vide Narayanpur P.S. Case No.129/2017 dtd. 30.08.2017, u/s- 366(A) of IPC and then the police conducted the investigation of the case and after completion of the investigation submitted charge-sheet u/s- 366/376 of IPC, R/w- Sec.4 of POCSO Act against the accused person Sri Anupam Das showing him as absconder accused.

3. The case is received by this Court on transfer for disposal. On production of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, charges under section- 366 of IPC, R/w- Sec.4 of POCSO Act are framed against him, the same are read over and explained to him to which he has pleaded not guilty.

4. During trial prosecution has examined as many as 4 (four) PWs. Considering the stand of the witnesses, the prosecution evidence is closed at the instance of Ld. Special P.P. and after closure of the prosecution evidence, the accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINT FOR DETERMINATION:**

i) Whether the accused person, on or about 26.07.2017 at about 12:00 mid-day at Meramukh under Narayanpur P.S, had kidnapped (or abducted) the victim girl (a minor girl under the age of eighteen years), daughter of informant Smti Dipali Bonia, from the road by criminal intimidation or abuse of authority or by other methods of compulsion induced the said girl) with intent that she may be compelled (or knowing it likely that she will be compelled) to marry you against her will or in order that she may be forced (or seduced) to illicit intercourse or knowing it likely that she will be forced (or seduced) to illicit intercourse with you, and thereby committed an offence punishable under section 366 of IPC, as alleged?

ii) Whether the accused person, on the same date, time and place, after kidnapping the prosecutrix, had committed penetrative

sexual assault on her person, and thereby committed an offence punishable under section 4 of POCSO Act, as alleged ?

DISCUSSIONS, DECISION AND REASONS THEREOF:

6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.

7. PW.1, the prosecutrix, stated that the informant is her mother. She knows the accused person. The occurrence took place about 2 years back. On the day of occurrence, at about 11:00 – 12:00 a.m. she had gone to her college namely, Madhab Deb College and from her college, she had gone to the house of her friend Priyanka Bonia, where she had stayed for one night. Next day, she returned home and came to know that her mother lodged an ejarah at Narayanpur P.S., as she had stayed in the house of her friend without informing her family members. The police recorded her statement, got her medically examined and also got her statement recorded thought the Court. Ext.1 is her said statement given before the Court and Ext.1(1) is her signature thereon.

8. PW2, Smti Dipali Bonia (informant), stated that she knows the accused person. The occurrence took place about 2 years back. On that day, her victim daughter had gone to her college, but she did not return home. For not finding out her daughter, she lodged case at the Police Station. Next day, her daughter returned home and told her that she (victim) had gone to one of her friend's house. She further stated that her victim daughter told her that the accused person neither had taken away her nor committed any bad acts upon her. Ext.2 is the ejarah lodged by her and Ext.2(1) is her signature thereon.

9. PW3, Sri Prafulla Das, stated that he knows the informant as well as her victim daughter. He does not know the accused person. He does not know anything about the alleged occurrence.

10. PW.4, Dr. Pinchana Namchoom (M/O), stated that on 06.03.2018, she was working as Medical & Health Officer-I at North Lakhimpur Civil Hospital and on that day, at about 1:05 p.m., on receiving a requisition from Narayanpur P.S., she medically examined victim girl (17 years), daughter of Sri Gohin Bonia, resident of Jalbhorla, under Narayanpur P.S., after being produced and identified by WPC/211- Munuka Handique and after obtaining voluntary and free consent and in presence of Mrs. Nina Das, 4th Grade employee of North Lakhimpur Civil Hospital and on examination she found as follows:-

Relevant Medical history:- According to the victim girl, she was in love with Papu das of Gogamukh Bhebeli. On 12th April, 2017 Papu took her to his home and they got married socially. After 20 days her family members took her to their own house. Again, on 17th July, 2017 Papu took her forcefully, to his home and after staying as husband and wife on 12th January, 2018 she came to her parents home at Narayanpur.

Findings of Medical examination:

- 1 Identification mark:- 2 small moles in left upper part of her chest.
- 2 Height & weight:- 4 ft. 11 inches & 40 kg.
- 3 General configuration: average.
- 4 Teeth : 28 Nos. in total.
- 5 Breast : well developed.
- 6 (i) Auxiliary hair : well developed
(ii) Pubic hair : well developed.
- 7 Private Parts:
 - i Vulva : healthy, no sign of injury.
 - ii Vagina : healthy, no sign of injury, admits two fingers.
 - iii Hymen : absent.
 - iv Uterus : not palpable.

- 8 Laboratory examination for spermatozoa detection: No spermatozoa seen (No.58/ 6.3.2018 at 1:00 p.m., NLCH).
- 9 Ossification test for age determination: Present age of the girl concerned is above 18.
- 10 External injury: There is no any injury mark to her private parts and other parts of her body.

Opinion: There is sign of sexual intercourse present. There is no injury to her private parts and other parts of her body. Her present age is above 18 (fifteen) years.

Ext.3 is her medical report and Ext.3 (1) is her signature thereon.

Appreciation of evidence:
(Offence U/s- 366 of IPC)

Age of the victim girl:

11. The victim (PW1), in her deposition, stated that she is aged about 18 years. PW2, mother of the victim, has not stated anything regarding the age of her victim daughter (PW1). Prosecution has not produced any age proof document, regarding the actual age of the victim. On the other hand, the medical officer, Doctor (M/O), after the medical examination of the victim on 6.3.2018, found the age of the victim as above 18 years. So, in absence of any age proof document, in the instant case, the opinion given by the M/O, can safely be held to be the actual age of the victim, i.e. above 18 years, a major girl.

12. **There is no eye witness to see the occurrence.**

13. PW1 is the victim cum prime witnesses in the instant case.

The deposition of the victim girl is that on the date of occurrence, she had gone to her college and she did not return home, from where she had gone to the house of her friend Priyanka Bonia where stayed for one night, but her mother due to her not returning home in time, lodged the ejarah at the police station.

The victim girl in her evidence, aforementioned, nowhere

uttered a single word that the accused person kidnapped her on the day of occurrence, from the road in front of her house.

Rather, during cross, she clearly stated that the accused person neither kidnapped her nor committed any bad acts upon her. Whatever she had stated before the Court, in her statement recorded u/s- 164 of Cr.P.C., she stated as instructed by her co-villagers and police.

Thus, the victim girl, who is major, above 18 years of age, has not implicated the accused person regarding his involvement in the commission of offence of kidnapping.

14. PW2, mother of the victim girl, is a hearsay witness and stated as like as the victim stated. So, her evidence is of no help to the prosecution case.

15. PW3 does not support at all the prosecution case, as he stated that he knows nothing about the alleged incident.

16. It is thus, seen that the ingredients of offence u/s- 366 of IPC are lacking in the instant case.

(Offence u/s- 4 of POCSO Act.)

16. The victim (PW1), in her deposition nowhere stated that the accused person had physical relationship with her. In cross, she categorically stated that the accused had not committed any bad acts upon her. She earlier stated in her statement before the Court recorded u/s- 164 of Cr.P.C., as instructed by her co-villagers and police.

17. PW2 (mother of the victim girl), also has not stated anything against the accused person regarding any penetrative sexual assault on her victim daughter (PW1) by the accused.

18. The other PW i.e. PW3 does not support at all the prosecution version, who stated that he knows nothing about the

incident.

19. PW4, the medical officer (M/O) although found sign of sexual intercourse present on the victim at the time of her medical examination, but in this respect, the victim girl has not uttered a single words anywhere in her evidence before the Court.

So, the opinion of M/O regarding presence of sign of sexual intercourse on the victim (PW2), which fact was not stated by the victim in her deposition, makes his (M.Os) inference doubtful.

Thus, no case is made out u/s- 4 of POCSO Act.

20. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s-366 of IPC, R/w- Sec. 4 of POCSO Act against the accused person beyond all reasonable doubts. Hence, I acquit him from the said offences.

21. The accused person is set at liberty forthwith.

22. The seized documents, if any, be given to its original owner in due course of time.

23. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 6th day of June, 2019.

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita)
Special Judge (FTC),
Lakhimpur, North Lakhimpur.

Transcribed & typed by me:
Shri D. Chetia, (Steno)

APPENDIX:

Prosecution witnesses:

PW.1, the prosecutrix
PW2, Smti Dipali Bonia
PW3, Sri Prafulla Das
PW.4, Dr. Pinchana Namchoom

Prosecution exhibits:

Ext.1- statement u/s- 164, Cr.P.C.
Ext.2- ejahar
Ext.3- medical report

Defence witnesses:

Nil.

Defence exhibits:

Nil

(P.C. Kalita)
Special Judge (F.T.C),
Lakhimpur, North Lakhimpur.