

**CAUSE TITLE**

**Special (POCSO) Case No.79/2019.**

Informant : 'Y'

Accused : Md. Rekibul Islam.

**ADVOCATES :**

For the State : Mr. Madhab Gogoi, learned Spl. Public Prosecutor.

For the Defence : Mr. Muksed Ali, learned Advocate.

**IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR,  
AT NORTH LAKHIMPUR.**

**P R E S E N T** - S.P. Khaund, (MA Economics, LLB),  
Special Judge,  
Lakhimpur, North Lakhimpur.

**Special (POCSO) Case No.79/2019.**

State of Assam.

-versus-

Md. Rekibul Islam.

Charges : Under Sections 366 IPC RW Sec.4 of the POCSO Act.

Dates of evidence. : 25.02.2020 and 23.03.2021.

Date of argument. : 22.04.2021.

Date of Judgment. : 22.04.2021.

**J U D G M E N T**

1) A brief account of this case is that, on 21.05.2016 at about 6 am, the 18 year old victim 'X' was found missing from her house. An F.I.R. regarding this incident was lodged by the victim's uncle 'Y', which was registered as Bihpuria PS Case No.330/2016 u/s 366 of the Indian Penal Code ( IPC for short ).

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of occurrence and recorded the statements of the witnesses. When the victim was recovered, he forwarded the victim to the Magistrate, who recorded her statement u/s 164 of the Code of Criminal Procedure ( CrPC for short ). He also forwarded the victim for medical examination. On

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completion of investigation, the I.O. submitted charge-sheet against the accused u/s 419/ 346/ 376 IPC.

3) On appearance of the accused, copies were furnished. This case was committed for trial vide order dtd. 02.08.2018 passed by the Addl. Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, in GR Case No.1189/2016. Subsequently, this case was transferred to the court of Asstt. Sessions Judge, Lakhimpur, for disposal. After hearing both the sides, a formal charge u/s 419/ 366/ 376 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. During trial, and after recording the evidence of few witnesses, the Asstt. Sessions Judge, noticed that the age of the victim was below 18 years, and thereafter, this case was sent back to this court as this case falls under the Protection of Children from Sexual Offences Act, 2012 ( POCSO Act for short ). Subsequent thereto, this case proceeded in this court and was registered as Special (POCSO) Case No.79/ 2019. Charge was altered and framed u/s 366 IPC RW Section 4 of the POCSO Act. The accused abjured his guilt and claimed innocence.

4) To substantiate its stance, the prosecution adduced the evidence of 4 (four) witnesses and the defence cross-examined only one witness. The other witnesses were not cross-examined. On the incriminating materials arising against him, the answers of the accused to the queries u/s 313 CrPC, depicts the plea of total denial.

5) I have heard the argument forwarded by the learned counsel for both the sides.

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**POINTS FOR DETERMINATION :**

i) Whether in the intervening night of 20.05.2016 and 21.05.2016, the accused induced the victim 'X' to go with him with intent that she might be compelled to marry him, or seduced to illicit intercourse?

ii) Whether the accused committed penetrative sexual assault on the victim?

**DECISION THEREON AND THE REASONS FOR THE DECISION :**

6) The victim's uncle 'Y' testified as PW.2 that the accused is not known to him. The incident occurred in the year, 2016. At the time of the incident, his niece 'X' was about 16 years of age. On the night of the incident, the accused eloped with his niece from the village Kolabil Mornoi. His elder brother i.e., victim's father called him in the morning and informed him that his daughter was missing. Then, he went to the original house and found one mobile belonging to the victim. He handed over the mobile phone to the police. He lodged the FIR with the police. After five days, the police recovered the victim and asked them to bring back the victim to their house. They went and brought back the victim 'X' to their house. The victim ( his niece ) did not inform them how she disappeared from the house. The victim again went away from the house. He did not know where the victim resides, at present. They did not search for her again, when she disappeared for the second time. The testimony given by the PW.2 earlier as a witness in the court of the Asstt. Sessions Judge

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is similar to his testimony given as PW.2 in this court. It is clear that the victim 'X' is not a victim. She eloped with the accused on her own volition. She was 16 years old at the time of the incident.

7) In sync with the evidence of PW.2, Shiva Narayan Chetry testified as PW.1 that the victim 'X' is his cousin. The incident occurred in the year, 2016. At that time, he was in Bihpuria on a visit. He usually resides in Guwahati. At the time of the incident, there was an outcry that the victim was missing from her original house at Kolabil Mornoi. Then, his uncle 'Y' lodged the ejarah. He found one mobile phone in the village and handed over the same to the police. Thereafter, he returned to Guwahati. When he came back from Bihpuria to Guwahati, he heard that his cousin was recovered by the police, and she was handed back to her family. PW.1 did not implicate that the victim eloped with the accused.

8) Similarly, the victim's mother also did not implicate that the accused is complicit. The victim's mother, say - 'Z' testified as PW.3 that the accused is not known to her. 'Y' is her brother-in-law and 'X' is her daughter. The incident occurred about five years ago. Her daughter eloped with a person, and then they frantically searched for her daughter and could trace out her. But, she again eloped for the second time. When she met her daughter, she confronted her, but her daughter did not give the name of the person with whom she eloped. She did not know where her daughter is at present.

9) The victim's father, say-'A' testified as PW.4 that the incident occurred about five years ago. He did not know whether his

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daughter eloped or she was kidnapped. Then, they frantically searched for his daughter, and then his younger brother lodged the ejarah with the police. The police could not trace out their daughter. They, however, managed to trace out his daughter and brought her back. Thereafter, the victim 'X' again eloped. This time, they could not trace out the victim after frantically searching for her. He did not know where is his daughter at present. As his daughter eloped for the second time, he did not search for his daughter again.

10) Recapitulating the entire evidence, it is thereby held that PW.2 testified that the victim eloped with the accused. The other witnesses did not implicate that the accused kidnapped the victim. The victim could not be traced out and her present address is not known. Even her parents failed to locate her present address. The victim's age is given as 16 years by PW.2. Two years on the higher side is taken as the age of the victim. It is held that the victim was a major at the time of the incident, and she eloped on her own volition.

11) It is held that the prosecution failed to prove beyond reasonable doubt that the accused induced the victim 'X' to elope with him and compelled her to marry him. It appears that the victim is married to the accused, at present, and the family members have disowned her. It is not clear if the victim is married to the accused at present. The victim could not be traced out. The prosecution failed to produce the victim as a witness. It is, thereby, held that the prosecution failed to prove beyond reasonable doubt that the accused kidnapped the victim and

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compelled her to marry him. The prosecution also failed to prove beyond reasonable doubt that the accused committed penetrative sexual assault on the victim.

12) Accordingly, the accused, Md. Rekibul Islam is acquitted from the charges u/s 366 IPC RW Section 4 of the POCSO Act and is set at liberty forthwith.

13) The Judgment is pronounced in the open court.

14) This case is disposed of on contest.

Given under the hand and seal of this Court on the 22<sup>nd</sup> day of April, 2021.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

**A P P E N D I X****Special (POCSO) Case No.79/2019.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Shiva Narayan Chetry.
2. PW.2 - Informant, 'Y'.
3. PW.3 - Victim's mother, 'Z'.
4. PW.4 - Victim's father, 'A'.

**LIST OF COURT WITNESS :**

Nil

**LIST OF EXHIBITS FOR PROSECUTION :**

Nil.

**LIST OF MATERIAL EXHIBITS FOR PROSECUTION :**

Nil.

**LIST OF WITNESSES FOR DEFENCE :**

Nil.

**LIST OF EXHIBITS FOR DEFENCE :**

Nil.

( S.P. Khaund )  
Special Judge,  
Lakhimpur, North Lakhimpur.

Transcribed and typed by :

Sri Satyabrata Kshattray, Stenographer.