

CAUSE TITLE

Special (POCSO Act) Case No.71/2018.

Informant : 'Y'

Accused : Sri Pulendra Doley.

ADVOCATES :

For the State : Mr M. Gogoi, learned Special Public Prosecutor.

For the Defence : Mr R. Pegu, 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 Act) Case No.71/2018.
GR Case No.127/2018

State of Assam.

-versus-

Sri Pulendra Doley.

Charges : Under Section 366 IPC Read With Section 6 POCSO Act.

Date of evidence. : 01/02/2021 and 17/03/2021.

Date of argument. : 17/03/2021.

Date of Judgment. : 17/03/2021.

J U D G M E N T

1) The prosecution case in a nutshell is that the minor victim 'X' was not having her menstrual periods and she was taken for medical examination. After medical examination, it was uncovered that the victim was pregnant and was carrying for eight months. When the victim was confronted, she admitted that Sri Pulendra Doley (hereinafter the accused) forcefully committed rape on her by threatening her with sharp weapon on 11/04/2018, at about 6.30 PM. An ejahar regarding this incident was lodged by the victim's father 'Y', which was registered as Dhakuakhana PS Case No.76/2018 under Section 366 (A) of the Indian Penal Code (IPC for short) Read With Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO

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Act for short) and ASI Jiten Gohain was entrusted with the preliminary steps and SI Gobinda Barman was entrusted to complete the investigation. Both the Investigating Officers (I/O in short) embarked upon the investigation. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure (CrPC for short). The victim was forwarded for medical examination. The I/O went to the place of occurrence and prepared the sketch map. On finding a prima facie case against the accused, the I/O submitted charge-sheet against him under Section 366 (A) IPC Read With 4 POCSO Act.

2) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 6 POCSO Act was framed, read over and explained to the accused. Earlier a formal charge was framed under Section 4 POCSO Act and under Section 366 IPC, but on a later date, the charge was altered to Section 6 POCSO Act. The accused abjured his guilt and claimed innocence.

3) To substantiate its stance, the prosecution adduced the evidence of five witnesses and the defence did not cross-examine the witnesses. The statement of the accused was recorded under Section 313 CrPC. I have heard arguments for both the sides.

POINTS FOR DETERMINATION :

i) Whether on 11/04/2018, at about 6.30 PM, the accused kidnapped the victim 'X' from the custody of her father, with intent that she might be compelled or knowing it to be likely that she would be compelled to marry the accused, or forced to illicit intercourse?

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ii) Whether the accused impregnated the victim 'X' and committed aggravated penetrative sexual assault on the minor victim 'X', who is also the accused person's niece and the accused person was in a position of authority over the victim 'X'?

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

4) The informant 'Y' testified as PW.-1 that the incident occurred in the year 2017. The accused is his brother-in-law. 'X' is his daughter. At the time of the incident, his wife was not well and he used to take his wife for treatment to Dibrugarh, Dhemajii and Lakhimpur. His daughter used to be alone at home, while he was busy with his wife's treatment, for almost a month. His daughter became pregnant. He learnt from the villagers that his daughter was not having her menstrual periods. As the neighbours exercised pressure, he had to lodge the ejahar against the accused. He did not write the ejahar, and so he did not know what was written in the ejahar. When he asked his daughter, he later learnt that the accused did not commit penetrative sexual assault on his daughter. Ext.1 is the FIR and Ext.1(1) is his signature.

5) The evidence of the informant is contradictory to the contents of the FIR. The victim also did not mention that the accused is complicit.

6) The victim 'X' testified as PW-2 that the informant 'Y' is her father. She knows the accused Pulendra Doley. The incident occurred about 3 years ago. Her mother was not well at that time. Her father used to take her mother for treatment to different places like Dhemaji, Dibrugarh etc. At that time, she

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was alone at home. The incident occurred about 3 years ago. It was evening and she was alone at home. At that time, one unknown person entered into her house and the unknown person committed rape on her. As she was terrified, she did not inform anybody about the incident. Meanwhile she was not having her menstrual periods and her parents came to know that she has skipped her menstrual periods. Her father then lodged the ejarah with the police when she was not having her menstrual periods. The police forwarded her for medical examination. She was also forwarded to the Magistrate who recorded her statement. She have given her statement before the Magistrate according to the narrative of their villagers. Ext.2 is her statement before the Magistrate and Ext.2(1) and 2(2) are her signatures.

7) The victim's evidence depicts that one person committed rape on her during her parents' absence. She was alone at home and taking cover of the night, one miscreant committed rape on her and impregnated her. She did not identify the accused as the miscreant who committed rape on her.

8) Smt Purnima Doley testified as PW-3 that she knows the accused person, the informant 'Y' and the victim 'X'. They are from her village. She does not know anything about the incident. Similarly, Smt Juli Pegu, PW-4 and Sri Mosko Doley, PW-5 testified that they know the informant 'Y', the accused and the victim 'X'. They did not know anything about the incident.

9) Recapitulating the entire evidence, it is held that the prosecution failed to prove beyond reasonable doubt that the accused is the person who impregnated the victim. The victim herself did not implicate that the accused is complicit. Her statement under Section 164 CrPC is contradictory to her

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testimony in the Court. It appears that the victim tried to screen the accused from punishment and so she did not implicate him. The victim retracted her statement under Section 164 CrPC. As the victim was a minor at the time of the alleged incident, she cannot be held guilty of perjury.

10) The prosecution failed to prove beyond a reasonable doubt that the accused kidnapped the victim 'X' from the custody of her father, with intent that she might be compelled to marry him or forced to illicit intercourse. The prosecution also failed to prove beyond a reasonable doubt that the accused is the miscreant who, despite being the victim's uncle, impregnated the victim by committing penetrative sexual assault on the minor victim 'X'.

11) The accused is thereby acquitted from the charges under Section 366 IPC Read With Section 6 POCSO Act, on benefit of doubt, and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 17th day of March, 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 Act) Case No.71/2018..****LIST OF WITNESSES FOR PROSECUTION :**

1. PW-1 - 'Y'.
2. PW-2 - 'X'.
3. PW-3 - Smt Purnima Doley.
4. PW-4 - Smt Juli Pegu.
5. PW-5 - Sri Masko Doley.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Ejahar.
2. Ext.2 - Statement of the victim 'X' under Section 164 CrPC.

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.