

CAUSE TITLE

Special (POCSO) Case No.43/2019.

Informant : 'Y'

Accused : Sri Sujit Bora.

ADVOCATES :

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

For the Defence : Mr. B. Borgohain, 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.43/2019.

State of Assam.

-versus-

Sri Sujit Bora.

Charges : Under Section 366 IPC RW Sec.8 of the POCSO Act.

Date of evidence. : 08.03.2021.

Date of argument. : 08.03.2021.

Date of Judgment. : 08.03.2021.

J U D G M E N T

1) The prosecution case, in nutshell, is that on 16.04.2019 at about 10 am, the informant Y's daughter 'X' went to take a bath in 'Gum-nadi' along with Y's niece, aged about 8 years, and when 'X' went to nearby jungle to answer nature's call, since then, she was missing, and subsequently, two Adivasi boys informed her that they witnessed one short boy dragging a girl holding her hand. Then, she became suspicious that Sri Sujit Borah (hereinafter referred to as the accused) kidnapped the victim 'X'.

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2) An ejahar regarding this incident was lodged by the victim's mother 'Y', and a Boginadi PS Case No.93/ 2019 u/s 366 of the Indian Penal Code, 1860 (IPC for short) RW Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act for short) was registered.

3) The Investigating Officer (I.O. in short) took up the investigation. The statement of the victim 'X' was recorded u/s 164 of the Code of Criminal Procedure (CrPC for short), and she was forwarded for medical examination. The I.O. prepared the sketch map of the place of occurrence and recorded the statements of the witnesses. On finding prima facie case, the I.O. submitted charge-sheet against the accused u/s 366 IPC RW Section 8 POCSO Act.

4) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge u/s 366 IPC RW Section 8 POCSO Act was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.

5) To substantiate its stance, the prosecution adduced the evidence of 2 (two) witnesses, while the defence did not cross-examine the witnesses.

6) I have heard arguments submitted on behalf of both the sides.

POINTS FOR DETERMINATION :

i) Whether on 16.04.2019, the accused kidnapped the victim 'X' with intent that she might be compelled, or knowing it to be

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likely that she would be compelled to marry him or that she might be forced or seduced to illicit intercourse with him?

ii) Whether the accused after kidnapping the victim 'X', committed sexual assault on her?

DECISION THEREON AND THE REASONS FOR THE DECISION :

7) The victim 'X' testified as PW.1 that the informant 'Y' is her mother. The incident occurred about a year ago. On the day of the incident, at about 10 am, she went to nearby river to take a dip and have a bath, and thereafter she did not return home. She boarded a bus and went to her 'mahi's' (aunt's) house in Gohpur, where she stayed for a few days and returned home. She came to know that as she was not at home her mother lodged an ejarah thinking that she went missing. The police then forwarded her for medical examination and she was also forwarded to the Magistrate, who recorded her statement. The accused did not elope with her nor commit improper act on her. She gave statement before the Magistrate according to the narrative of local people, who pressurized her to give such statement. She proved her statement as Ext.1, wherein Ext.1(1) and Ext.1(2) are her signatures.

8) The informant 'Y' testified as PW.2 that the victim 'X' is her daughter. The accused is known to her. Her daughter 'X' was not interested in studies, so she scolded her daughter on the day of the incident. Then, 'X' went to the river to take a bath, and thereafter 'X' did not return home as she scolded 'X' in the morning. 'X' then went away to her 'mahi's' (aunt's) house at

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Gohpur. After a frantic search, when she could not find 'X', she lodged an ejahar with the police. When 'X' returned, then she came to know that the accused did not kidnap her. 'X' went away because, 'Y' scolded her in the morning. She proved the Ejahar as Ext.2, wherein Ext.2(1) is her signature. The ejahar was written by another person. She did not read the ejahar and she did not know what was written in the ejahar.

9) The victim and the informant did not implicate that the accused is complicit. Their evidence does not depict that the accused is guilty of the alleged offence. After careful scrutiny of the evidence of the witnesses, it can be safely held that there is no incriminating evidence that the accused kidnapped the victim 'X' and committed sexual assault. The victim's evidence clearly depicts that on being pressurised by the local people, she gave her statement before the Magistrate implicating the accused, but in reality, the accused did not commit any offence.

10) It is, thereby, held that the prosecution failed to prove beyond a reasonable doubt that the accused kidnapped the victim X, and committed sexual assault.

11) Therefore, the accused, is acquitted from the charges u/s 366 IPC RW Section 8 of the POCSO Act, on benefit of doubt, and accordingly he is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 8th day of March, 2021.

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

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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.43/2018.

LIST OF WITNESSES FOR PROSECUTION :

1. PW.1 - Victim 'X'.
2. PW.2 - Informant, 'Y'.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Statement of the victim.
2. Ext.2 - Ejahar.

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 Kshattri, Stenographer.