

**IN THE COURT OF SPECIAL JUDGE (CHILDREN'S COURT)
LAKHIMPUR : AT NORTH LAKHIMPUR.**

PRESENT : M.A. Choudhury,
Special Judge (Children's Court),
Lakhimpur, North Lakhimpur.

SPECIAL (CHILDREN) CASE NO.4/2018.

State of Assam. ... Complainant.

-Vs-

Sri Hemanta Tewa. ... C.I.C.L.

Advocates appeared in the case :

Mr. Madhab Gogoi, Spl. Public Prosecutor. ... For the State of Assam.

Mr. Sushil Bori, Advocate. ... For the C.I.C.L.

Date of framing of charge. : 04.07.2019.

Dates of taking evidence. : 22.08.2019 & 22.10.2019.

Date of hearing Argument. : 11.11.2019.

Date of delivery of Judgment. : 16.11.2019.

J U D G M E N T

1. The case of the prosecution side may, in brief, be described, thus :

On 03.05.2017, Sri Rajesh Orang lodged an ejahar with Khelmati Town Police Out Post under North Lakhimpur Police Station to the effect that the victim X, a minor girl aged about 13 years is his younger sister. The victim X has been reading in class-IX at Chaboti High School, North Lakhimpur. On 28.04.2017 in the morning, while the victim X was going to her school at Chaboti, North Lakhimpur, at that time, some one had kidnapped her. On 28.04.2017, he did not search for the victim X on believing that she had gone to the house of his

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relatives. As the victim X had not returned back to the house since 5 (five) days from the date of the occurrence, he started to search for the victim X and then, he came to know that his younger sister victim X had been in the house of one Sri Nowa Tewa of village Lilabari Puthimari Gaon.

2. On receiving the ejahar, the In-charge of Khelmati Town Out Post made a GD entry of the same vide Khelmati Town Out Post GD Entry No.45 dtd. 03.05.2017 and forwarded the same to the Officer-in-charge of North Lakhimpur Police Station for registering a case under proper sections of Law. On receiving the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide North Lakhimpur P.S. Case No.507/2017 under Sections 363/ 342 IPC.

3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared the sketch map of the place of occurrence. The I.O. recorded the statements of the witnesses u/s 161 CrPC. The I.O. recovered the victim X and got her medically examined at North Lakhimpur Civil Hospital by the doctor. Thereafter, on 04.05.2017, the I.O. got the statement of the victim X recorded u/s 164 CrPC in the court. The I.O. arrested the CICL, Sri Hemanta Tewa and forwarded him before the court. After completion of the investigation, the I.O. on being found sufficient incriminating materials against the CICL, Sri Hemanta Tewa under Section 366(A) IPC and under Section 4 of the POCSO Act, submitted the charge-sheet against the CICL, Sri Hemanta Tewa under Section 366(A) IPC and under Section 4 of the POCSO Act.

4. On receiving the charge-sheet, the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, forwarded the case to this court as the offence u/s 4 of the POCSO Act is exclusively triable by the Special Judge. Thereafter, my learned predecessor holding the CICL, Sri Hemanta Tewa a minor one below the age of 18 years, returned back the case to the court of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. Thereafter, the learned Chief Judicial

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Magistrate, Lakhimpur, North Lakhimpur, vide order dtd. 24.08.2017 passed in GR Case No.1213/2017 forwarded the case to the Juvenile Justice Board, Lakhimpur, North Lakhimpur.

5. Thereafter, the Juvenile Justice Board, Lakhimpur, North Lakhimpur, vide order dtd. 07.06.2018, forwarded the case to this court holding that the CICL, Sri Hemanta Tewa is above 16 years of age at the time of commission of the offence and as he developed mental and physical capacity to commit the alleged offence and having ability to understand the consequences of the offences and the circumstances in which he allegedly committed the offences under Section 366 IPC and under Section 4 of the POCSO Act, the Juvenile Justice Board, Lakhimpur, North Lakhimpur, was of the view that there is need for trial of the CICL, Sri Hemanta Tewa as an adult, and accordingly, the instant case was forwarded to the court of Special Judge (Children's Court), Lakhimpur, North Lakhimpur, for trial.

6. The CICL, Sri Hemanta Tewa made his appearance before the court and necessary copies were furnished to him. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the CICL under Section 366 IPC and under Section 4 of the POCSO Act in the case record, the charges under Section 366 IPC and under Section 4 of the POCSO Act had been framed against the CICL, Sri Hemanta Tewa. The charges were read over and explained to the CICL, to which he pleaded not guilty and claimed to be tried.

7. In course of trial, the prosecution side examined 5 (five) witnesses i.e., the all non-official witnesses as mentioned in the charge-sheet.

8. The recording of statement of the CICL, Sri Hemanta Tewa u/s 313 CrPC is felt not necessary as because the prosecution witnesses examined have not implicated the CICL in their evidence regarding commission of any offence.

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9. The CICAL, Sri Hemanta Tewa denied to adduce any evidence in his defence.

10. Heard Argument from the learned advocates of both sides.

11. Perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.

12. The points for determination in this case are :

(I) Whether the CICAL, Sri Hemanta Tewa on 28.04.2017 in the morning kidnapped the victim X, a minor girl above the age of 12 years and below the age of 18 years while she was going to Chaboti High School, North Lakhimpur, from her house situated at Gobarishali Gaon under North Lakhimpur Police Station, with intent that she might be compelled or knowing it to be 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 CICAL, Sri Hemanta Tewa after kidnapping the victim X, a minor girl above the age of 12 years and below the age of 18 years, had committed penetrative sexual assault on her person?

DECISION AND REASONS THEREOF

13. PW.1 is the victim X. PW.1, the victim X in her evidence stated that she knows the CICAL, Sri Hemanta Tewa. His house is situated at Lilabari. Sri Rajesh Orang is her elder brother, who is the informant of the case. According to her evidence, the occurrence had taken place about 2 (two) years back in a day. On the date of occurrence, she went away from her house without informing her mother at Lilabari to the house of her uncle, Karnelish. She stayed for

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3 / 4 days in the house of her uncle, Karnelish. Then, she came to know that her brother, Sri Rajesh Orang lodged the ejahar with Khelmati Police Out Post under North Lakhimpur Police Station regarding her missing. Thereafter, police had taken her for her medical examination at North Lakhimpur Civil Hospital. Thereafter, her statement was recorded in court u/s 164 CrPC. She in her evidence stated that the CICL, Sri Hemanta Tewa had neither kidnapped her nor performed any sexual intercourse with her.

This is the evidence adduced by PW.1, the victim X. On a careful scrutiny of her evidence, I do not find any incriminating material in her evidence against the CICL for committing any offence.

14. PW.2, Sri Rajesh Orang in his evidence stated that the victim X is his younger sister. According to his evidence, the occurrence had taken place about 2 (two) years back. At the time of occurrence, the victim X was reading in class-IX at Chaboti High School, North Lakhimpur. On the date of occurrence in the morning, the victim X went to the school, but she did not return back to her house after school hours. Thereafter, he along with others searched for the victim X, but could not find her. Then, he lodged the ejahar with Khelmati Police Out Post regarding missing of the victim X. After 3/ 4 days from the date of lodging of the ejahar, the victim X returned back to her house. Then, the victim X stated that she had gone to the house of her uncle at Lilabari. He in his evidence stated that the victim X stated to him that the CICL, Sri Hemanta Tewa had neither kidnapped her nor performed any sexual intercourse with her. He in his evidence stated that he had lodged the ejahar with the Police Station, but he had not written the ejahar. It has been written by an Ejahar writer.

This is the evidence adduced by PW.2, Sri Rajesh Orang, who is the informant of the case as well as elder brother of the victim X. On a careful scrutiny of his evidence, I do not find any incriminating material in his evidence against the CICL regarding commission of any offence.

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15. PW.3, Sri Niranjana Orang in his evidence stated that he knows the C/CL, Sri Hemanta Tewa as well as Sri Rajesh Orang, who is the informant of the case. The house of the C/CL, Sri Hemanta Tewa is situated at Lilabari. The house of Sri Rajesh Orang is situated in his village. He in his evidence stated that he knows the victim X, who is the younger sister of Sri Rajesh Orang. According to his evidence, the occurrence had taken place about 2 (two) years back. Soon after the occurrence, he went to the house of Sri Rajesh Orang. Then, he came to know from Sri Rajesh Orang that the victim X had been missing from his house. After 3 / 4 days, he came to know from Sri Rajesh Orang that the victim X had returned back to his house. He in his evidence stated that he did not know anything else regarding the occurrence of this case.

This is the evidence adduced by PW.3, Sri Niranjana Orang. There is no any incriminating material in his evidence against the C/CL regarding commission of any offence.

16. PW.4, Sri Naren Orang in his evidence stated that he knows the C/CL, Sri Hemanta Tewa. He in his evidence stated that he knows Sri Rajesh Orang, who is his cousin brother. His house is situated adjacent to the house of Sri Rajesh Orang. He in his evidence stated that the victim X is the younger sister of Sri Rajesh Orang. According to his evidence, the occurrence had taken place about 2 (two) years back. At the time of occurrence, he was in his house. On the following day in the evening, he came to know from Sri Rajesh Orang that the victim X has been missing from his house. Thereafter, he had not gone in search of the victim X. Sri Rajesh Orang searched for the victim X. After 3 / 4 days, the victim X returned back to her house. Then, he came to know from the victim X that she had gone to the house of her maternal uncle at Lilabari. The victim X stated that the C/CL neither kidnapped her nor performed any sexual intercourse with her.

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This is the evidence adduced by PW.4, Sri Naren Orang. There is no any incriminating material in his evidence against the CICL regarding commission of any offence.

17. PW.5, Smti Sumpi Orang in her evidence stated that Sri Rajesh Orang, who is the informant of the case is her elder brother in relation. The house of the CICL, Sri Hemanta Tewa is situated nearby the house of her father at village Gubarishali Gaon. She in her evidence stated that she knows the victim X, who is the younger sister of Sri Rajesh Orang. According to her evidence, the occurrence had taken place about 2 (two) years back. At the time of occurrence, she was unmarried and was living in the house of her father at village Gubarishali Gaon. On the following day of the occurrence in the evening, Sri Rajesh Orang stated to her that the victim X had been missing from his house. Thereafter, she along with Sri Rajesh Orang went in search of the victim X, but could not find her. Thereafter, Sri Rajesh Orang lodged an ejahar with the Police Station. After 3/ 4 days from the date of lodging of the ejahar, the victim X had returned back to the house. Then, the victim X had stated to her that she had gone to the house of her maternal uncle at Lilabari. The victim X also stated to her that the CICL, Sri Hemanta Tewa neither kidnapped her nor performed any sexual intercourse with her.

This is the evidence adduced by PW.5, Smti Sumpi Orang. There is no any incriminating material in her evidence against the CICL regarding commission of any offence.

18. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charges under Section 366 IPC and under Section 4 of the POCSO Act brought against the CICL, Sri Hemanta Tewa and the CICL deserves to be acquitted.

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19. I, therefore, hold the CICAL, Sri Hemanta Tewa not guilty and acquit him from the charges under Section 366 IPC and under Section 4 of the POCSO Act. The CICAL, Sri Hemanta Tewa is set at his liberty forthwith.

20. The bail bond of the CICAL, Sri Hemanta Tewa is cancelled and his surety is discharged.

21. Given under my hand and seal of this court on this the 16th day of November, 2019.

(M. A. Choudhury)
Special Judge (Children's Court),
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury)
Special Judge (Children's Court),
Lakhimpur, North Lakhimpur.

Transcribed & typed by-
Sri Satyabrata Kshattri, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE :

PW.1 - Victim X.

PW.2 - Sri Rajesh Orang, the informant of the case as well as elder brother of the victim X.

PW.3 - Sri Niranjana Orang.

PW.4 - Sri Naren Orang.

PW.5 - Smti Sumpi Orang.

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2. WITNESSES EXAMINED BY THE DEFENCE SIDE :

Nil.

3. DOCUMENTS PRODUCED BY THE PROSECUTION SIDE IN THE CASE :

Nil.

4. DOCUMENTS PRODUCED BY THE DEFENCE SIDE IN THE CASE :

Nil.

(M. A. Choudhury)
Special Judge (Children's Court),
Lakhimpur, North Lakhimpur.
