

CAUSE TITLE**Special (POCSO Act) Case No.3/2017.**

Informant : 'Y'

Accused : Sri Pabitra Gogoi and Sri Lachit Gogoi.

ADVOCATES :

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

For the Defence : Mrs B. Saikia, 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.3/2017.
GR Case No.210/2016.

State of Assam.

-versus-

Sri Pabitra Gogoi and Sri Lachit Gogoi.

Charges : Under Section 366(A)/34 IPC RW Section 4 POCSO Act.

Date of evidence. : 27/03/2018, 12/11/2018, 07/03/2019,
21/10/2019 and 23/03/2021.

Date of argument. : 23/03/2021.

Date of Judgment. : 23/03/2021.

J U D G M E N T

1) The prosecution case in a nutshell is that on 22/07/2016, the minor victim 'X' went to her school and did not return home. The victim's parents frantically searched for her and they learnt that the victim was kidnapped by Sri Pabitra Gogoi and Sri Lachit Gogoi @ Jil (hereinafter the accused persons).

2) An ejahar regarding this incident was lodged by the victim's father 'Y', which was registered as Ghilamara PS Case No.84/2016 under Section 366(A)/34 of the Indian Penal Code (IPC for short) and the O/C himself swung into action. Investigation commenced, the statement of the victim was

Contd...

recorded under Section 164 of the Code of Criminal Procedure (CrPC for short) and the victim was also forwarded to the Doctor for medical examination. The Investigating Officer (I/O in short) went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses. On finding prima facie materials, the I/O submitted charge-sheet against the accused persons under Section 366(A)/34 IPC Read With Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

3) On appearance of the accused, copies were furnished and after hearing both the sides, a formal charge under Section 366(A)/34 IPC Read With Section 4 POCSO Act was framed, read over and explained to both the accused persons, to which they pleaded not guilty and claimed to be tried.

4) To substantiate its stance, the prosecution adduced the evidence of six witnesses. The defence cross-examined some of the witnesses. I have heard the arguments forwarded by the learned counsel for both the sides.

POINTS FOR DETERMINATION :

i) Whether on 22/07/2016, at about 1.30 PM, the accused persons acted in concert and in furtherance of their common intention, induced the minor victim 'X' to go with them, with intent that she may be compelled to marry one of them, or forced to illicit intercourse?

ii) Whether at the same time and place, the accused committed penetrative sexual assault on the minor victim 'X'?

Contd...

DECISION THEREON AND THE REASONS FOR THE DECISION :

5) The minor victim 'X' testified as PW-1 that she had a love relationship with the accused Pabitra Gogoi and on the day of the incident, she eloped with him on her own volition. Thereafter, her marriage was solemnized with the accused according to social customs and rites. At present she is staying with the accused Pabitra Gogoi as his wife. At present she is blessed with a son who is about 8 months old.

6) I have carefully perused the evidence of the victim 'X'. She has given her age as 21 years. She is not a minor and her evidence depicts that she went with the accused Pabitra Gogoi on her own volition and solemnized marriage with him. At present she is the mother of an 8 year old son. There is no evidence that the accused persons kidnapped the victim and in furtherance of their common intention, the victim was seduced to illicit intercourse.

7) Similarly, the evidence of 'Y' as PW-2 depicts that the victim 'X' is his daughter. The incident occurred about 2 years ago. On the day of the incident, his daughter 'X' eloped with the accused. So he lodged an ejahar with the police. Then he gave his consent to his daughter to solemnize her marriage with the accused Pabitra Gogoi. At present his daughter is married to the accused Pabitra Gogoi. He has admitted in his cross-examination that his daughter was 19 years old at the time of the incident.

8) It is clear from the evidence of PW-1 and PW-2 that the marriage between PW-1 and the accused Pabitra Gogoi has been solemnized and there is no evidence of abduction or sexual assault.

Contd...

9) Sri Probeen Saikia is the Headmaster of Batamari Model High School. He testified as PW-3 that the victim 'X' was a student of his school. She was studying in Class-X in the year 2016. She attended her class on the day of the incident. At about 5 PM, the victim's father called him over phone and informed him that his daughter has been kidnapped while she was returning from school.

10) It can be safely held that the evidence of Probeen Saikia does not at all implicate that the accused persons are complicit. Similarly, the victim's grandmother 'Z' testified as PW-4 that her granddaughter is married to the accused Pabitra Gogoi. Her granddaughter went to the school and did not return home and then her son lodged an ejarah with the police. The victim's mother 'A' testified as PW-5 that her daughter is 21 years at present and married to Pabitra Gogoi. They are blessed with a son who is 2 ½ years old. Her daughter eloped with the accused Pabitra Gogoi on her own volition and she had a love relationship with the accused Pabitra Gogoi.

11) Sri Tulon Gogoi testified as PW-6 that he did not know the accused persons, but now after this case he came across the accused persons. He knows the informant 'Y' who is from his (PW-6) village. He knows the informant Y's daughter 'X'. The incident occurred in the year 2016. At present the victim 'X' is married to the accused Pabitra Gogoi and she is staying with him at Laluk as his wife. The accused Pabitra Gogoi and the victim are blessed with a son now, who is about 4 ½ years old. He did not know anything more about the incident.

12) In view of my foregoing discussions, it is held that the evidence of the witnesses PW-1, PW-2, PW-4 and PW-5 does not

Contd...

at all implicate that the accused persons kidnapped the victim. The evidence of the victim, her parents and her grandmother i.e., PW-1, PW-2, PW-4 and PW-5 clearly depicts that the victim had a love relationship with the accused Pabitra Gogoi and she eloped with him on her own volition. The prosecution failed to prove this case beyond reasonable doubts.

13) The accused persons Sri Pabitra Gogoi and Sri Lachit Gogoi are acquitted from the charges under Section 366(A) IPC Read With Section 4 POCSO Act, and are set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 23rd 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.3/2017.**LIST OF WITNESSES FOR PROSECUTION :

1. PW-1 - 'X'.
2. PW-2 - 'Y'.
3. PW-3 - Sri Probeen Saikia.
4. PW-4 - 'Z'.
5. PW-5 - 'A'.
6. PW-6 - Sri Tulon Gogoi.

LIST OF COURT WITNESSES :

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.