

IN THE COURT OF SPECIAL JUDGE (POCSO)

NALBARI

SPL. (P) CASE NO. 15/2018

U/s 6 Protection of Children from Sexual Offences Act, 2012

r/w s.366 Indian Penal Code

State of Assam

- Vs -

Mintu Ali

..... Accused

Present

Smti Munmun B.Sarma

Special Judge (POCSO),

Nalbari

Counsel for Prosecution : Mr.K.K.Sarma, Special Public Prosecutor

Counsel for Defence : Sri Mukunda Barman, Sri Tulu Pathak, Advocate

Evidence : 16/06/2020

Argument : 16/06/2020

Judgment : 20/06/2020

JUDGMENT

1) On 11/07/2016 informant Girish Kalita lodged an ejahar before the O/C, Ghagrapar PS, stating inter alia that, on 05/07/2016 at 3-30 PM one Md. Makaib Ali, kidnapped his daughter "X" (16 years) in a car. The accused identified himself as Mintu Das. Hence, this present case.

2) On receipt of the FIR police registered a case as Ghagrapar PS Case No. 125/16 u/s 366(A) IPC. The police went to the place of occurrence and examined the available witnesses. Statements of the witnesses were recorded, medical examination of the victim 'X' was done and her statement u/s 164 CrPC was duly recorded. On completion of the investigation, a prima facie case having appeared against the accused, the I/O submitted charge sheet against the accused Mintu Ali u/s 366 IPC r/w Sec.6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act).

3) Cognizance was taken u/s 366 IPC r/w s.6 POCSO Act and the accused Mintu Ali appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on Case Record and Case Diary and prima facie case having appeared u/s 366 IPC r/w s.6 POCSO Act, charges were framed and the content of the offences were read over and explained to the accused Mintu Ali, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 366 IPC r/w s.6 POCSO Act against the accused person, the prosecution side examined 2 (Two) witnesses, same being, the informant & the victim. To substantiate his claim, defence did not examine any witness. The accused person's case, as could be ascertained from cross-examination of the prosecution witness was that of total denial & that the victim was major at the time of the incident and she went with the accused at her own will.

5) The **points for determination** are –

- a) Whether on 05/07/2016 at about 3:30 PM, the accused abducted the victim 'X', (aged about 16 years), thus, committing offence

u/s 366 IPC?

- b) Whether the accused on the same date, time and place committed aggravated penetrative sexual assault upon the victim (aged about 16 years), thus, committing offence u/s 6 POCSO Act?

DISCUSSIONS, DECISIONS & REASONS THEREOF –

6) I heard the arguments forwarded by the Ld. Special Public Prosecutor and Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. Considering the limited evidence available on record, the charge u/s 366 IPC r/w s.6 POCSO Act are discussed together herein below, without losing their individuality.

7) **To be convicted u/s 366 IPC it must be proved** that the accused Mintu Ali kidnapped the victim. On the other hand, **to be convicted u/s 6 POCSO Act it must be proved** that the accused Mintu Ali committed aggravated penetrative sexual assault upon the victim, aged 16 years. **S.5 POCSO Act defines 'aggravated penetrative sexual assault'** and covers different circumstances ranging from (a) to (u).

8) Keeping the above parameters in mind, the evidences of the witnesses and documentary evidences are analyzed. The **victim 'X' deposed as PW2** and the **informant deposed as PW1**. Both of them stated that the victim and the accused were in love and wanted to marry, but the villagers were against it as the accused is from a different religion. The villagers instigated the informant to lodge the case, though he himself didn't have any reason to lodge the case. However, the victim and the accused got married in the same year itself and

residing together as husband & wife. Furthermore, they have a daughter out the wedlock.

9) Thus, what appears from the evidence is that neither the informant nor the victim supported the prosecution case. No material appeared against the accused u/s 366 IPC r/w s.6 POCSO Act and prosecution failed to prove the case against him beyond all reasonable doubt.

ORDER

10) Thus, in view of the discussions made in the prior paragraphs it is held that the accused is not guilty u/s 366 IPC r/w s.6 POCSO Act. **Accused Mintu Ali is acquitted on benefit of doubt and set at liberty.** Bail bond is cancelled and the bailor discharged.

Zimma, if any, is made absolute.

A copy of the judgment be forwarded to the learned District Magistrate, Nalbari, as provided u/s 365 CrPC.

Let the case record be consigned to record room after completing the formalities.

Given under my hand and seal of this Court on this the **20th day of June'2020.**

(Smti Munmun B.Sarma)
Special Judge (POCSO),
Nalbari

APPENDIX

- (A) **Prosecution Witnesses:**
a) PW1 – Girish Kalita (Informant)
b) PW2 – 'X' (Victim)
- (B) **Prosecution Exhibits** : None.
- (C) **Defence Witnesses** : None.
- (D) **Defence Exhibits** : None.

(Smti Munmun B.Sarma)
Special Judge (POCSO),
Nalbari