

**IN THE COURT OF SPECIAL JUDGE (POCSO)**  
**NALBARI**

**SPL. (P) CASE NO. 09/2021**

*U/s 4 Protection of Children from Sexual Offences Act, 2012*  
*r/w Sec. 366-A/ 376 Indian Penal Code*

**State of Assam**

- Vs -

**Raju Ahmed @ Raju Ali** ..... Accused

**Present**

**Smti. Munmun B. Sarma**

Special Judge (POCSO)

Nalbari

**Counsel for Prosecution:** Sri K K Sarma, Learned Special  
Public Prosecutor

**Counsel for Defence** : Anowar Hussain and Rafiqul  
Islam, Advocate

**Evidence** : 12/01/2022

**Argument** : 12/01/2022

**Judgment** : 19/01/2022

**JUDGMENT**

1) On 28/08/2020 informant Abul Hussain lodged an  
ejahar before the O/C, Mukalmua PS, stating inter alia that,

on 27/08/2020 at about 5-30 PM, in absence of other members of the family, accused Anowar Hussain with the help of Saniwara Begum, Fulsan Ali and Raju Ali, kidnapped his minor daughter (hereinafter referred as 'victim' or 'X') and confined her daughter in an unknown location.

2) On receipt of the FIR, police registered the case as Mukalmua PS Case No. 361/2020 u/s 366(A) Indian Penal Code (hereinafter referred to as IPC) r/w s.4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act). The police went to the place of occurrence and examined the available witnesses & their statements recorded. Once the victim was recovered, her medical examination was done and her statement u/s 164 Criminal Procedure Code (hereinafter referred to as CrPC) was duly recorded. On completion of the investigation, a prima facie case having appeared against the accused Raju Ahmed @ Raju Ali, the Investigating Officer (herein after referred to as I/O) submitted charge-sheet against the accused Raju Ahmed @ Raju Ali u/s 366(A) IPC r/w s.4 POCSO Act.

3) Cognizance was taken u/s 366(A) IPC r/w s.4 POCSO Act and on receiving summon, the accused Raju Ahmed @ Raju 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-A/ 376 IPC r/w s.4 POCSO Act, charges were framed and the content of the charge were read over and explained to accused Raju Ahmed @ Raju Ali, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 366-A/376 IPC r/w s.4 POCSO Act against the accused, the prosecution side examined 2 witnesses, same being the informant & the victim and prosecution exhibited 2 documents. Prosecution evidence was closed as it was seen that further witnesses cannot help prosecution case. The accused person's case, as could be ascertained from cross-examination of the prosecution witnesses & his statement u/s 313 CrPC, was that of total denial.

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

a. Whether on 27/08/2020 at around 5-30 PM at Sapkata village, the accused Raju Ahmed @ Raju Ali kidnapped the victim 'X', who was under the age of 18 years, thus committing **offence u/s 366-A IPC?**

b. Whether on subsequent date, time and place the accused Raju Ahmed @ Raju Ali committed rape on the victim, and thus, committing **offence u/s 376 IPC?**

- c. Whether on subsequent date, time and place, the accused Raju Ahmed @ Raju Ali committed penetrative sexual assault upon the victim 'X', who was under the age of 18 years at the time of the incident, thus, committing **offence u/s 4 POCSO Act?**

**DISCUSSION, DECISION AND REASONS THEREOF**

6) I heard the arguments forwarded by the Ld. Special Public Prosecutor and the Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charges u/s 366-A/ 376 IPC r/w s.4 POCSO Act are analyzed herein below together without losing their individuality, in light of the limited evidence available on record and the argument forwarded by both sides.

7) To be convicted u/s 366-A IPC it must be proved that Raju Ahmed @ Raju Ali accused kidnapped the victim 'X'. To be convicted u/s 376 IPC or s.4 POCSO Act it must be proved that the accused committed rape on the victim, and that the victim was a minor at the time of the incident.

8) The **informant Abul Hussain (PW-1)** is the informant of the case & **PW-2 is the victim** of the case. Both of them deposed that, the victim and the accused were

in love but the informant and other family members were not agreeing to their marriage. Thus, the victim ran off to the accused and the accused didn't kidnap the victim. Due to misunderstanding PW-1 lodged the case. PW-2/ victim specifically mentioned that the accused neither forced her or enticed her to go with him. Both the witnesses are completely silent about the accused committing rape on the victim.

9) Thus, the above evidences reveals that at the time of the incident the victim ran away to with the accused on her own and & the accused didn't kidnap her. Thus, in view of the above discussions, it is held that **prosecution failed to prove beyond all reasonable doubt that the accused Raju Ahmed @ Raju Ali committed offence u/s 366-A/ 376 IPC r/w s.4 POCSO Act.**

#### **ORDER**

10) From the discussion made above, it is seen that both the victim & the informant has exonerated the accused from all charges. Thus, it is held that prosecution failed to prove beyond all reasonable doubt the charge u/s 366-A/ 376 IPC r/w s.4 POCSO Act against the accused Raju Ahmed @ Raju Ali. Hence, **accused Raju Ahmed @ Raju Ali is found not**

**guilty and is acquitted from the charge u/s 366-A/  
376 IPC r/w s.4 POCSO Act.**

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused shall stand cancelled after period of 6 months & bailor accordingly discharge.

Given under my hand and seal of this court on this the  
**19<sup>th</sup> day of January'2022.**

**(Smti. Munmun B. Sarma)**

Special Judge (POCSO)

Nalbari

**APPENDIX**

**(A) Prosecution witnesses:**

- i. PW 1 : Abul Hussain (Informant)
- ii. PW 2 : Victim

**(B) Prosecution exhibited documents:**

- i. Ext.1 : FIR
- ii. Ext.1(1) : Signature of informant/ PW-1
- iii. Ext. 2 : Statement of Victim u/s 164 CrPC
- iv. Ext-2(1)-(3) : Signatures of victim/ PW-2

**(C) Defence witnesses : Nil.**

**(D) Defence exhibited document : Nil.**

**(Smti. Munmun B. Sarma)**

Special Judge (POCSO)

Nalbari