

IN THE COURT OF SPECIAL JUDGE(POCSO) ::NALBARI**Present : Farhana Sultana**

Special Judge, Nalbari.

Date of Judgment : 23-09-2022**SPL. (P) CASE NO. : 21/2022***U/S Sec. 366-A/376 Indian Penal Code***Complainant : State of Assam**Represented by : Sri K.K Sarma, Ld. Special Public
Prosecutor**Accused : Chirajul Ahmed @ Ali**

S/O- Md. Mojib Ali

Vill- Niz Pakowa Khairabari

PS- Belsor

Dist-Nalbari, Assam.

Represented by : Pankaj Sarma, Advocate.

1. Date of offence : 05-06-2017
2. Date of FIR : 06-06-2017
3. Date of Charge Sheet : 30-06-2027
4. Date of Framing of Charge : 14-11-2019
5. Date of Commencement of Evidence: 23-09-2022
6. Date on which judgment reserved : Nil
7. Date of Judgment :23-09-2022
8. Date of the Sentencing Order, if any : ---

Accused Details :

Rank of accused	1
Name of Accused	ChirajulAhmed @ Ali
Date of Arrest	-----
Date of Release on Bail	26/09/2019
Offences charged with	IPC 366-A/376
Whether Acquitted	Acquitted
Sentence Imposed	Nil
Period of detention undergone during trial for purpose of Sec 428 CrPC	---

J U D G M E N T

1. On 05/06/2017 one Jamir Ali lodged an ejahar before the O/C, Belsor PS stating inter alia that on that day at around 6-30 PM his victim daughter was walking, the accused Chirajul Ali forcefully kidnapped her, from there. They searched for their victim daughter, but could not find her.

2. On receipt of the ejahar, O/C, Belsor PS registered it as Belsor PS Case No. 115/17 u/s 366 Indian Penal Code (hereinafter referred to as IPC). The police went to the place of occurrence and examined the available witnesses & their statements were recorded. Victim's 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 accused Chirajul Ahmed, the Investigating Officer (herein after referred to as I/O) submitted Final Report against the accused. The Final Report was put up before the SDJM (S) Nalbari who had rejected the Final Report and examined the Informant, victim and Medical Officer. After perusal of their statements the Ld. (SDJMS) found materials against the accused U/S 366(A)/376/506(II)/342 of IPC and committed the case to the Hon'ble Sessions Judge, Nalbari for trial.

3. Cognizance of offence was taken by the Hon'ble Sessions Judge, u/s 366A/376/506/342 IPC and proceeded to frame the charge the above sections of law and record evidence. Thereafter, while recording evidence, it was noticed by the Hon'ble Sessions Judge that there was a minor at the time of the occurrence, and there was material of penetrative sexual assault against the accused. Hence, since, materials u/s 366A/376/506/342 of IPC read with section 4 of POCSO Act are found against the accused, the Hon'ble Sessions Court, sent the case to this court, directing to register it under the POCSO Act and conduct trial. Accordingly, on receipt of the case record, the same was perused and finding material against the accused u/s 366A/376/506/342 of IPC read with section 4 of POCSO Act, charge was framed afresh and the same on being read over and explained the accused pleaded not guilty and claimed to be tried.

4. To prove the offences against the accused person, the prosecution side examined 2 witnesses & exhibited two documents. Considering the evidence of the Informant and victim further examination of other witnesses were dispensed with, as it would not have changed the fate of the case. Examination of the accused U/S 313 of Cr.P.C, was dispensed with as not implicated. The accused person's case was that of total denial.

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

i) Whether the accused on 5/06/2017 at about 6-30 pm at Niz Pakowa kidnapped the victim, who is under the age of 18 years and **thus committing offence u/s 366-A IPC ?**

ii) Whether the accused on the same day raped upon victim, and **thus committing offence u/s 376 IPC ?**

Arguments forwarded by Both Sides –

6. Learned Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused did in fact raped the victim. He prayed that maximum punishment should be given.

7. On the other hand learned defence counsel has submitted that prosecution has failed to prove the case. There are contradictions in the evidence of both the PWs adduced before the court and the statements of the witnesses recorded u/s 161 and 164 of CrPC. Learned defence counsel has further submitted that the victim has nullified the prosecution case and

from the evidence of the victim, no ingredients of offence is made out against the accused. He also, argued that the accused never kidnapped the victim or raped her. So, Court should consider that aspect and accordingly pronounce judgment.

DISCUSSION, DECISION AND REASONS THEREOF

8. 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 charge u/s 366-A/376/506/342 of IPC read with section 4 of POCSO Act are analyzed herein below in view of the materials available on record and the argument forwarded by both sides.

9. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

10. **PW 1**, the Informant Jamir Ali has stated that victim is his daughter. The incident took place on 5/6/2017. He was lying on the bed and his wife was praying. Taking the chance of their engagement his victim daughter eloped with the accused Chirajul Ali. They could not find her at home, they searched for her. He came to know from his father-in-law that Chirajul had taken away his daughter. So, he lodged the ejahar. His victim daughter recovered on 7/6/2017. The victim and the accused person appeared in the police station on their own. At present his daughter is married to Suluk Ali.

11. **PW 2**, the victim deposed that informant is her father. The incident happened on 5/6/2017 at evening time. Accused Chirajul is her first cousin. Chirajul asked her to accompany him to go to Guwahati for a pleasure trip. As he is a cousin, she did not object and went along with him. She did not inform anybody, so her father become suspicious and lodged this case. She has no objection if the accused is acquitted from this case.

12. From the evidence of both the Informant and the victim, it appears that, there is no ingredients of any of the sections with which the accused is charged. Though in the ejahar, the Informant has labeled a number of allegations against the accused person, but, in his evidence and also in the evidence of the victim, no such statements are made which would prove those allegations against him. The most important aspect of a case under the POCSO Act is that the victim should be a minor and that Prosecution must adduce conclusive evidence to prove the age of the victim. In this case Prosecution failed to establish through proper documentary evidence that the victim was a minor, as stated in the ejahar. Prosecution has failed to bring home any evidence which will bring home, the charges labeled against the accused, Chirajul Ahmed. So, it can be safely held that Prosecution has failed to prove the charge against the accused Chirajul u/s 366A/376/506/342 of IPC read with section 4 of POCSO Act

14. It is pertinent to mention here that, though the POCSO Act provides the adverse presumptions against the

accused under sections 29 and 30, to take resort to these adverse presumptions, the basic foundations for prosecution of the accused in the case has to be established. In this case it is clearly seen that the Prosecution has failed to establish the foundational facts against the accused to draw the presumptions provided under section 29 and 30 of the POCSO Act.

15. Accordingly the accused is proved to be not guilty u/s 366-A/376 IPC.

16. As per the compensation scheme for women victims/survivors of sexual assault/other crimes, 2018, the factors which are to be considered are-gravity of offence and mental or physical harm or injury suffered by the victim, expenditure incurred on the medical treatment of the victim, either physical or mental, including counselling, travelling, funeral, loss of educational opportunity, loss of employment , whether the incident was a single isolated one, whether the victim became pregnant or contracted any sexually transmitted disease or HIV, etc., any disability suffered by the victim and the financial condition of the family of the victim, among others. Now, in this case, the incident was a single isolated one. The financial status of the Informant's family is acceptable. There is nothing in the record to show that the victim loss the opportunity of education of employment. Question of pregnancy or contracting sexually transmitted disease or HIV does not arise in this case. Hence, in the facts and circumstances of the case, I am of opinion that there is no necessity for payment of compensation in this case.

O R D E R

17. From the discussion made above, it is seen that the prosecution has miserably failed to prove the offence u/s 366-A/376/376/506/342 of IPC read with section 4 of POCSO Act IPC against the accused. Hence, **accused Chirajul Ali is found not guilty and is acquitted from the charge of offence u/s 366-A/376/506/342 of IPC read with section 4 of POCSO ACT.**

18. The accused person is set free at his liberty forthwith.

19. Bail bond furnished by the accused shall stand canceled after period of 6 months.

20. The seized articles, if any be disposed of according to law.

Given under my hand and seal of this court on this the 23rd day of September /2022.

(Farhana Sultana)

Special Judge
Nalbari

Dictated & corrected by me

Special Judge
Nalbari

APPENDIX
LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

(A) Prosecution:

<u>Sl Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
i)	PW 1 : Jamir Ali	Informant
ii)	PW 2 : Mis Ruma Begum	Victim
(B)	<u>Defence</u>	None
(C)	<u>Court</u>	None

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

(A) Prosecution Exhibits :

<u>Sl.</u>	<u>Exhibit No</u>	<u>Description</u>
i)	Ext P 1/PW 1	: ejahar
ii)	Ext P 1(1)/PW1	: Signature of PW 1,
iii)	Ext P2/PW 2	: Statement of victim recorded u/s 164 CrPC.
iv)	Ext P2(1)/PW 2	: Signature of PW 2.

- (B) Defence Exhibits** : None.
- (C) Court Exhibits** : None.
- (D) Material Exhibits** : None

(Farhana Sultana)
Special Judge
Nalbari

