

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

Present : Farhana Sultana
Special Judge, Nalbari.

Date of Judgment : 20-09-2022

SPL. (P) CASE NO. : 22/2022

U/S Sec. 363/342/376 Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act, 2012.

Complainant : State of Assam

Represented by : Sri K.K Sarma, Ld. Special Public
Prosecutor

Accused : Hafizul Haque

S/O- Jakir Hussain
NH 15, Near Jumma Mazid,
Sipazar, Muslimghopa, Darang

Represented by : Anjurani Das, Advocate.

1. Date of offence : 15-10-2019
2. Date of FIR : 16-10-2019
3. Date of Charge Sheet : 26-05-2022
4. Date of Framing of Charge : 16-08-2022
5. Date of Commencement of Evidence: 05-09-2022
6. Date on which judgment reserved : Nil
7. Date of Judgment : 20-09-2022
8. Date of the Sentencing Order, if any : ---

Accused Details :

Rank of accused	1
Name of Accused	Md. Hafizul Haque
Date of Arrest	
Date of Release on Bail	26-03-2022
Offences charged with	363/342/376 IPC R/ W Sec 4 of POCSO Act.
Whether Acquitted	Acquitted
Sentence Imposed	Nil
Period of detention undergone during trial for purpose of Sec 428 CrPC	41 days

J U D G M E N T

1. The prosecution story in brief is that on 16/10/2019 one Abdul Gani lodged an ejahar before the O/C, Belsor PS stating inter alia that on 15/10/2019 at around 10:00 am his 16 years old daughter went to College at Chamata and at that time accused Hafizul Haque induced her and kidnapped her and confined in an unknown place and raped his daughter, (hereinafter referred as Victim). The incident was informed by victim over phone.

2. On receipt of the ejahar, O/C, Belsor PS registered it as Belsor PS Case No. 246/2019 u/s 363/342/376 Indian Penal Code

(hereinafter referred to as IPC) R/W Sec R/W 10 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 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 Hafizul Haque, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against him u/s 363/342/376 IPC R/W 4 of POCSO Act.

3. Cognizance of offence was taken u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012 and summon was issued to the accused. On receiving summon, the accused Hafizul appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on case record and case diary, a prima facie case having appeared u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012, charge was framed u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act and the content of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. To prove the offence u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012, against the accused person, the prosecution side examined 2 witnesses & exhibited 2 documents. Considering the evidence of the Informant and victim further examination of other witnesses were dispensed with, as it would not have change 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 15/10/2019 at around 10 AM at Gamarimuri kidnapped the victim from lawful guardianship and **thus committing offence u/s 363 IPC ?**

ii) Whether the accused on the same day, same time wrongfully confined the victim and **thus committing offence u/s 342 IPC ?**

iii) Whether the accused at Tamilnadu committed rape upon the victim and **thus committing offence u/s 376 IPC ?**

iii) Whether the accused committed penetrative sexual assault upon the victim, who was under the age of 18 years **thus committing offence u/s 4 of POCSO Act ?**

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 sexually assaulted 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 sexually assaulted or harassed 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 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012 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 Abdul Gani has deposed that victim is her daughter and he knew the accused person. The incident took place in the year 2019 but did not remember the date of occurrence. On the day of occurrence his daughter went to college but did not return, so they searched for her. On the next day his daughter called him over phone and informed him that she was in a place of out of Assam. PW 1 also deposed that his daughter went with the accused Hafizul. She informed him that she willingly went

away with the accused. She decided of her own and left her house with the accused willingly. He lodged the ejahar after receiving the phone call. At the time of marriage she was 22 years of age. At present his daughter is with the accused. PW-1, has also, stated that, he had mentioned the age of his victim daughter in the ejahar on assumption. He also, cleared that his daughter had failed twice in class VII and IX. He also, stated that at the time of the incident his victim daughter was studying in HS 1st year.

11. **PW 2**, the victim deposed that informant is her father. She knew the accused person. The incident happened on 15/10/2019. At that time she already appeared HSLC Examination. She had love with the accused and in pursuance of affair with him, she eloped with the accused willingly. The accused took her to his maternal uncle's house at Khanowa under Darrang district. Thereafter she went to Tamilnadu with him on her own will. He did not force her to go with him. After reaching Tamilnadu, she got married to the accused and thereafter she lived with the accused as husband and wife. In the meantime her mother in law expired and they came to Assam. At that time police asked them to go to Belsor Police Station. Accordingly they went to the Belsor Police Station. Thereafter family members of both of them solemnized their social marriage.

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, aged 16 years as stated in the ejahar, rather, it has come on the record that, her age was mentioned on assumption and that she was studying in HS 1st year at that time. It has been also, brought to record that she failed twice in class VII and IX. So, if we calculate the age of the victim from her academic years, she appears to be more than eighteen years at the time of the incident. Moreover, since she has stated that, she eloped with the accused out of her relation with him , no ingredient of any of the offences can be brought home, by Prosecution, either under the IPC or under the POCSO Act, against the accused Hafizul Haque. So, it can be safely held that Prosecution has failed to prove the charge against the accused Hafizul Haque u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012.

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 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012.

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 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012 against the accused. Hence, **accused Hafizul Haque is found not guilty and is acquitted from the charge of offence u/s 363/342/376 IPC R/W Sec. 4 of POCSO Act, 2012.**

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 20th 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 : Abdul Gani	Informant
ii)	PW 2 : Miss Ayesha 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 recorded u/s 164 CrPC
iv)	Ext P2(1)/PW 2 to Ext P2(3)	: Signatures of PW 2.

(B) Defence Exhibits : None.

(C) Court Exhibits : None.

(D) Material Exhibits : None

(Farhana Sultana)
Special Judge
Nalbari