

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

Special Judge, Nalbari.

**Date of Judgment : 09-09-2022****SPL. (P) CASE NO. : 55/2019***U/S 376 IPC R/W Sec. 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 : Suluk Ali**S/O- Md. Baser Ali  
Vill- Gowalpara  
PS- Belsor  
Dist-Nalbari, Assam.

Represented by : Mainul Haque, Advocate.

- |    |                                      |   |            |
|----|--------------------------------------|---|------------|
| 1. | Date of offence                      | : | 23-10-2019 |
| 2. | Date of FIR                          | : | 23-10-2019 |
| 3. | Date of Charge Sheet                 | : | 28-11-2019 |
| 4. | Date of Framing of Charge            | : | 17-01-2020 |
| 5. | Date of Commencement of Evidence:    | : | 13-02-2020 |
| 6. | Date on which judgment reserved :    | : | --         |
| 7. | Date of Judgment                     | : | 09-09-2022 |
| 8. | Date of the Sentencing Order, if any | : | ---        |

**Accused Details :**

<b>Rank of accused</b>	<b>1</b>
<b>Name of Accused</b>	<b>Suluk Ali</b>
<b>Date of Arrest</b>	<b>23-10-2019</b>
<b>Date of Release on Bail</b>	<b>4/05/2020</b>
<b>Offences charged with</b>	<b>4 of POCSO Act</b>
<b>Whether Acquitted</b>	<b>yes</b>
<b>Sentence Imposed</b>	
<b>Period of detention undergone during trial for purpose of Sec 428 CrPC</b>	<b>192 days</b>

**J U D G M E N T**

1. On 23/10/2019 one Hajera Bibi lodged an ejarah before the O/C, Belsor PS stating inter alia that on that very day at about 10 AM in her absence, accused Suluk Ali kidnapped her 16 years victim daughter. The accused has been inducing her since 5/6 months ago. She came to know that her daughter is now pregnant.

2. On receipt of the FIR, O/C, Belsor PS registered it as Belsor PS Case No. 253/2019 u/s 366/376 of Indian Penal Code (hereinafter referred to as IPC) R/W Sec. 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 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 Suluk Ali, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against accused Suluk Ali u/s 366/376 IPC R/W 4 of POCSO Act.

3. Cognizance of offence was taken against accused Suluk Ali u/s 366/376 IPC R/W Sec. 4 of POCSO Act, 2012 and summon were issued to the accused. On receiving summon, the accused 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 376 IPC R/W Sec 4 of POCSO Act, 2012, charge was framed u/s 376 IPC R/W Sec 4 of POCSO Act against the accused 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 376 IPC R/W Sec. 4 of POCSO Act, 2012, against the accused person, the prosecution side examined 6 witnesses & exhibited 7 documents. Defence did not examine any witness. The accused person's case was that of total denial.

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

i) Whether the accused 5/ 6 months prior to 23/10/19 at

Panigaon committed rape upon the victim **thus committing offence u/s 376 IPC ?**

ii) Whether the accused during the aforementioned period at committed penetrative sexual assault upon the victim and **thereby committed an 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 penetrative sexual assault upon 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 discrepancies in the evidence of all 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 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 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. The Informant of this case has been examined as PW-1. PW-1, Hajera Bibi has stated in her deposition that, she knew the accused from the time when he took away her victim daughter. At the time of the incident her victim daughter was sixteen years of age. Her deposition revealed that when her daughter went to the Milan Chowk in search of her, one Maruti car came and took away her daughter. After some time she received a phone call from the mother of the accused who said that the victim was taken to their house by the accused Suluk Ali and called her to their house. She went there and tried to bring her daughter back, but, they did not allow. There she came to know that Sirajul engaged Suluk to kidnap her daughter. The gaonburha asked her to solemnize their marriage, but, she refused as the victim was still minor.

11. On 15-01-2019, Police recovered her daughter from the house of Suluk. Again on 23.10.2019, Suluk kidnapped the victim. At that time her daughter was 8 months pregnant as Suluk raped her first time I.e, on 12.01.2019. PW-1, has proved the ejahar as Ext-1.

12. It is clear from her cross examination that, she did not get the birth of her victim daughter registered with the authorities. So, she was not in a position to state the age in which she admitted her vic-

tim daughter to school. She has admitted that, her victim daughter failed in her primary school. However, she has denied the suggestion given by the Ld. Defense Counsel that the victim was 19 years of age at the time of the incident. It has also, come to the record from the cross examination of the Informant that, another case, being no. 141/19 was pending in the Court of Hon'ble Sessions Judge, with similar kind of allegations. Ld. Defense Counsel has argued that, the Informant had lodged these false cases involving her daughter, to extort money from them.

13. PW-2, victim, has mentioned a different date of occurrence, and said that it took place on 12.06.2019. she was kidnapped by the accused and taken to his house. She stayed there for two nights. On 15.06.2019, the accused took her to Kalakuci and from there she was recovered by Police and was handed over to her parents. Again on 23.10.2019, she was kidnapped by the accused. After reporting to police she was brought back from the house of Suluk Ali. She further stated that, she was pregnant from the month of June when the accused kidnapped her for the first time. At that time the accused had sexual intercourse with her as a result of which she became pregnant.

14. Her cross examination reflected that, before this incident, another boy, named Sirajul kidnapped her. The victim denied that, she stated before the I.O, that she was 18 years of age at the time of the incident. She also, denied that she stated before the I.O, that she had love affair with the accused Suluk Ali, and her whole family knew it and Suluk Ali, often visited their house. But, perusal of the state-

ment recorded by the I.O, it revealed that she indeed stated like that and that she was not stating the truth in the Court. She also, denied that she did state before the I.O, that Suluk Ali, did not kidnap her and kept her in his house for two days and that she knew him from the day of incident only.

15. PW-3, Fulia Bibi, said that she did not know anything about the incident. PW-4, Gafur Ali stated that, he does not know much about the incident but, his granddaughter, i.e, victim told him that accused kidnapped her from the road. No other independent witness has been examined by Prosecution in support of the case.

16. The medical Officer, Dr. Urmi Devi Choudhury was examined as PW-5, who stated that, the victim told her that about four months prior to her examination she went away with a known person and had physical relation and that she was pregnant at that time. On examination the victim was found 20 weeks four days pregnant. The X-ray report of the victim showed that she was above sixteen years. Medical report of the M.O, was exhibited as Ext-3. No DNA test was done at that time as the victim did not deliver the baby.

17. PW-6, Investigating Officer has confirmed that, the victim told her at the time of investigation that she was 18 years of age. I.O, has also, confirmed that the victim stated to her that she had love affair with the accused Suluk Ali and all her family members knew about it and Suluk often visited their house. She further confirmed that, victim did not state before her that the accused kidnapped her, kept her for two days.

18. Hence, from the evidence of the I.O, it is clear that, the victim stated in her statement recorded u/s 161 of Cr.P,C, that she was eighteen years of age and she was in love with the accused and that it was known to family members and Suluk Ali, often visited her house. This is clearly contradicting the evidence of the victim recorded in the Court. In her very initial statement before the I.O, she did not state that the accused Suluk Ali, kidnapped her. This statement also, directly contradicts her evidence that accused Kidnapped her, which she stated in her examination in Chief. This two contradictions are vital ones and definitely affects the root of the case.

19. Ld. Defense Counsel has submitted that, as the victim had stated in her statement recorded u/s 161 of Cr.P.C and 164 of Cr.P.C, actually, the victim and the accused was in love relationship and they gradually established sexual relation as a result of which she became pregnant. Her statement before the Magistrate also, reflects that, she did not inform her family members about her pregnancy and told Suluk about it. So, Suluk Ali, talked to his parents and they agreed to get their son married to the victim. So, the next morning at around 10 am, she went to the house of Suluk Ali, without informing her parents. She further stated before the Magistrate that Suluk is innocent and she herself went to the house of the accused and had consensual sexual intercourse with him.

20. Now, though it is seen above that, the victim had made fully contradictory statements before the I.O, and the Magistrate in support of the accused, but, since the victim was stated to be minor her consent is no consent in the eye of law.



21. It has to be looked into whether the Prosecution has been able to conclusively prove that the fact that the victim was a minor at the time of the incident. First of all, the Prosecution could not produce any age proof document to establish the age of the victim to be below 18 years. Victim herself stated before the I.O, that she was 18 at the time of the incident. Her mother in her cross examination has stated that she never got any birth certificate of the victim and so she could not say when the victim was admitted in her primary school. She admitted that, victim might have failed in her primary school. She has also, not mentioned date of birth of the victim. So, it is clear from the aforesaid evidence that, the Informant had given the age of the victim in the ejahar on assumption. Therefore, when the Prosecution has not been able to establish the minority of the victim conclusively, it is clear that, POCSO Act will not be attracted.

22. If the minority of the victim has not been proved, it has to be assumed that the victim was a major at the time of incident. Moreover, Prosecution must prove according to preponderance of probability that the accused kidnapped the victim and raped her. It has already come on record that Prosecution has also, failed to establish these allegation against the accused as there are material contradictions in the versions of the victim given at different stages, affecting the root of the case.

23. Only two independent witnesses have been examined and they have also, not been able to bring any light to the Prosecution case.

24. At last but, never the least, Ld. Defense Counsel has produced a marriage certificate issued by the Sadar Qazi, Registrar, Muslim Marriage and Divorce, Nalbari showing that, both the victim and the accused got married on 21.08.21. Both the accused and victim jointly filed an affidavit stating that they got married and living peacefully in the house of the accused.

25. So, considering all the above, I am of considered opinion that, the Prosecution has failed to establish the primary facts of the case against the accused according to preponderance of probability.

26. It is now a settled principle of law that under the POCSO Act, the Prosecution is required to prove the foundational facts of the case on the standard of preponderance of probability and only then the presumptions u/s 29 and 30 of POCSO Act can be drawn. As we have found out in the aforesaid discussion, the Prosecution has failed to establish the foundational facts of the case on the standard of preponderance of probability. As such the accused Suluk Ali is found not guilty of the offence charged and he deserves to be acquitted

27. From the evidence of all the PWs 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. Prosecution has failed to bring on record any evidence which will bring home, the charges labeled against the accused, Suluk Ali. So, it can be safely held that Prosecution has failed to prove the charge against the accused Suluk Ali u/s 376 IPC R/W Sec. 4 of POCSO Act, 2012.

28. 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.

29. As regards the question of compensation, I do not find it to be a fit case for consideration for payment of compensation, as in my opinion the allegations brought by the informant is not true, and the same could not be proved.

30. Accordingly the accused is proved to be not guilty u/s 376 IPC R/W Sec. 4 of POCSO Act, 2012.

### **O R D E R**

31. From the discussion made above, it is seen that the prosecution has miserably failed to prove the offence u/s 376 IPC R/W Sec. 4 of POCSO Act, 2012 against the accused. Hence, **accused Suluk Ali is found not guilty and is acquitted from the charge**

**of offence u/s 376** IPC R/W Sec. 4 of POCSO Act, 2012.

32. The accused person is set free at his liberty forthwith.
33. Bail bond furnished by the accused shall stand canceled after period of 6 months.
34. The seized articles, if any be disposed of according to law.
- Given under my hand and seal of this court on this the 9th 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:**

<b><u>Sl.Rank</u></b>	<b><u>Name</u></b>	<b><u>Nature of Evidence</u></b>
i)	PW 1 : Hajera Bibi	Informant

- ii) PW 2 : Ruma Begum           Victim  
 iii) PW 3 : Fulia Bibi            Independent  
 iv) PW 4 : Gafur Ali             -Do-  
 v) PW 5 : Dr. Urmi Devi Choudhury   MO  
 vi) PW 6 : WSI Parismita Gogoi   I/O.  
 (B) **Defence**                       None  
 (C) **Court**                           None

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**(A) Prosecution Exhibits :**

- | <b>Sl.</b> | <b><u>Exhibit No</u></b> | <b><u>Description</u></b>             |
|------------|--------------------------|---------------------------------------|
| i)         | Ext 1                    | : Ejahar,                             |
| ii)        | Ext 2                    | : Statement recorded u/s 164 of CrPC. |
| iii)       | Ext 2(1)                 | : Signature of PW 2,                  |
| iv)        | Ext-3                    | : Medical Report,                     |
| v)         | Ext 3(1),3(2):           | Signatures of PW 5                    |
| vi)        | Ext 4                    | : X- Ray report                       |
| vii)       | Ext 4(1)                 | : Signature of Dr. Prabodh Kr. Sarma, |
| viii)      | Ext 5                    | : Ultrasound Report,                  |
| ix)        | Ext 5(1)                 | : Signature of Dr. Prabodh Kr. Sarma, |
| x)         | Ext-6                    | : Sketch Map,                         |
| xi)        | Ext 6(1)                 | : Signature of PW 6,                  |
| xii)       | Ext 7                    | : Charge Sheet,                       |
| xiii)      | Ext 7(1)                 | : Signature of PW 6                   |

- (B) **Defence Exhibits**                       : None.

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

**(Farhana Sultana)**  
Special Judge  
Nalbari