

IN THE COURT OF THE SPECIAL JUDGE, UDALGURI

**Special POCSO Case No. 19/2014
(Arising out of Panery P.S. Case No. 69/2014)
U/S 366 A IPC R/W section 4 of POCSO ACT, 2012**

**PRESENT : Sri Chatra Bhukhan Gogoi
Special Judge, Udalguri.**

Charge framed on:-29.11.2014

State of Assam
-Vs -
Nantu Ali @ Amir Ali....Accused person.

Date of Recording Evidence on –20.1.15, 29.1.15, 10.2.15, 18.2.15, 11.3.15,
28.4.15, 13.5.15, 2.6.15, 3.7.15 and 19.8.2015,

Date of Hearing Argument on –2.3.2020.

Date of Delivering the Judgment on –13.3.2020.

Appearance:

Advocate for the State-----Mrs. A. Basumatary, Ld. P.P.

Advocate for the Accused-----Mr. D. Saharia, Ld. Advocate.

JUDGMENT

1. The brief fact, of the prosecution case, is that on 16.9.2014 one Aziz Khan lodged an FIR in Panery police station alleging, inter alia, that on 15.9.2014 at about 8 pm Nantu Ali, S/o- Md. Faijar Ali of the same village allegedly kidnapped the 14 years old daughter (X) (real name withheld) of the informant and kept her confined in some unknown place. Though informant made drastic search but could not trace her out. Hence this case.

2. Following the information, Panery police station registered a case being Panery P.S. case No.69/14 u/s 366 A IPC and SI Arup Jyoti Baishya was entrusted to investigate the case.

3. Accordingly, the I.O. took up investigation, visited the place of occurrence, recorded the statements of the witnesses U/S 161 Cr.P.C., seized one attested copy of birth certificate of the victim girl, sent the victim to court for recording her statement U/S 164 Cr.P.C., also sent her for medical examination, arrested the accused person and finally, on completion of investigation laid the charge sheet against accused u/s 366A IPC and Section 4 of POCSO Act with a view to stand trial.

4. In due course, the then Hon'ble Special Judge registered a case being Special (POCSO) case No. 19/14 and took cognizance of the offences u/s 366A IPC and Section 4 of POCSO Act and vide the same order dated 29.11.2014 framed charges u/s 366A IPC and Section 4 of POCSO Act. Particulars of the offences on being read over and explained accused pleaded not guilty and claimed trial.

5. During the course of trial, prosecution examined as many as 20 (twenty) witnesses namely- Aziz Khan as PW1, Musstt Johura Khatoon as PW2, Musstt. Formuda Begum as PW3, Aminul Khan as PW4, Miss Fatima Khatoon as PW5, Faizar Ali as PW6, Musstt. Sabiran Begum as PW7, Musstt. Aimina Begum as PW8, Musstt. Halema Begum as PW9, Musstt. Amiran Nessa as PW10, Mahtab Ali as PW11, Safikul Ali as PW12, Dr. Ajanta Bordoloi as PW13, Amirul Ali as PW14, Mrs. G. Rabha as PW15, Musstt. Asuram Begum as PW16, Kasim Ali as PW17, Firuz Khan as PW18, Musstt. Majiran Begum as PW19 and Arup Jyoti Baishya as PW20 who is the I.O. of the case.

6. At the end of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Accused has, however, denied all evidence of the prosecution side as false and pleaded his innocence. But, on being asked, he declined to adduce defence evidence to substantiate his case.

7. **Points for determination:-**

(i) Whether 15.9.2014 at 8 PM accused Nantu Ali @ Amir Ali induced the minor daughter of informant (X) (real name withheld) to go from her place of residence to unknown place intending that or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person including you as alleged?

(ii) Whether on the same day, time and place you committed penetrative sexual assault on the minor girl of the informant (X) (real name is withheld) or forced her to do so with you as alleged ?

8. **Discussion, Decision and reasons for such decision:-**

I have heard the vociferous arguments advanced by the earned lawyers appearing for both sides.

9. For coming to a conclusion, based on evidence and documents on record, it is necessary to know the ingredients of offences U/S 366 A IPC and Section 4 of the POCSO Act. So, before going to discuss the evidence on record, it is apposite to refer the definition of Section 366 A IPC and Section 4 of POCSO Act.

10. **366A. Procurement of minor girl.**—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

11. **Section 4 of POCSO Act:- Punishment for penetrative sexual assault.**-Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than

seven years but which may extend to imprisonment for life, and shall also be liable to fine.

12. The learned P.P., Mr. Arabindra Basumatary by drawing the attention of this court to the evidence on record, particularly, the evidence of the alleged victim girl and medical evidence arduously contended that in the present case the prosecution has been able to substantiate the charges against the accused with credible and trustworthy evidence. According to him, in the present case, prosecution altogether examined twenty witnesses and the evidence of the victim girl has been corroborated in material particulars by evidence of doctor as well as other prosecution evidence. It is contended that accused and victim belong to same village and they know each other. Therefore, there is no question of identification of accused. Moreover, the learned P.P. contended that it is a fit case to record judgment of conviction as the involvement of the accused with the alleged crime U/S 366A and Section 4 of POCSO Act is clearly established.

13. On the other hand, the learned counsel appearing for the accused person highly disputed the submission made by the learned P.P. By drawing the attention of the court to the evidence of prosecution witnesses, particularly the evidence of the informant, the victim, the medical officer, the mother of victim, the I.O. etc. the learned counsel for accused submitted that contrary to the allegation made in the FIR the prosecution failed to substantiate the charges U/S 366A IPC and Section 4 of POCSO Act for sustaining conviction. It is submitted that PW1, the informant in his cross-examination failed to establish the actual age of his daughter. He even could not remember the date of birth of his daughter. He further stated that police seized copy of attested birth certificate of his daughter. The original one was with him. His daughter was born in his house and birth certificate was not immediately obtained and no information was also given to hospital. He obtained the birth certificate only in the year 2013. He did not apply for the birth certificate. Someone of his village applied the same but he could not remember his name. It was obtained by a person of Nepali community, how he obtained it he does not know. He

stated the age of his daughter only on presumption. On the other hand. PW13, Dr. Ajanta Bordoloi deposed that she examined the victim on 22.9.2014 and on ultrasonography examination found single live fetus of 15 +_ 1 week of gestational age. On x-ray examination the approximate age of the girl was found 18 to 19 years. PW20, Sri Arup Jyoti Baishya, who was the investigating officer, deposed in his evidence that he seized the birth certificate as produced by the father of the victim girl vide seizure list Ext.1, wherein he put his signature as Ext.1(3). He also stated that he confirmed from the authority about the genuineness of the certificate at the time of seizure. But in which manner he confirmed the said fact with the authority, there is no evidence.

14. The learned defence counsel further contended that the prosecution side adduced false and exaggerated evidence against the accused by suppressing the material fact.

15. Learned defence counsel also contended that out of the twenty witnesses examined by the prosecution PW6, Faizar Ali PW7, Musstt. Sabiran Begum, PW10, Musstt. Amiran Nessa and PW11, Mahtab Ali were declared as hostile by the prosecution. It is also argued that PW1, Aziz Khan, PW2, Musstt. Johura Khatoon, PW4, Aminul Khan, PW5, Miss Fatima Khatoon are members of the same family and, as such, their evidence is interested one. They gave exaggerated evidence against the accused only with a view to punish him by adducing false and fabricated evidence. As such, no reliance can be placed on their evidence.

16. The learned defence counsel also arduously contended that out of the twenty witnesses examined by prosecution PW13, Dr. Ajanta Bordoloi, PW15, Mrs. G. Rabha and PW20, Arup Jyoti Baishya are official witnesses whose evidence are inconsistent with the evidence of PW1, PW2, Pw4 and PW5 who are members of the same family.

17. Learned defence counsel submitted that the entire prosecution story is based on falsehood as their evidence are totally unworthy of credit. Whatever

they have stated before police U/S 161 Cr.P.C. have not been stated by them in court, but projected a different story by suppressing the material fact.

18. The statements of hostile witnesses have no evidentiary value. As such, no reliance can be placed on their evidence. The learned counsel for accused also submitted that the true fact is that the victim girl was major at the relevant time and she has love affair with the accused and they had physical intimacy even prior to filing of the FIR. They projected a concocted story in the FIR only to make out a case against the accused person. Moreover, the physical relation with the accused was with the full consent of the girl but when accused refused to marry her, the present case has been filed against him alleging some false and imaginary facts. As such, the learned defence counsel arduously contended that neither the offence U/S 366A IPC nor Section 4 of POCSO Act have been established by prosecution for sustaining conviction. Therefore, the counsel prays to acquit the accused from the charges forthwith.

19. Having considered the arguments advanced by the learned counsel appearing for both sides, this court carefully examined the evidence and documents available on record for arriving at a just decision.

20. On perusal of the evidence of prosecution witnesses, this court found four categories of evidence adduced by prosecution side. A group of witnesses consisting of four witnesses namely, PW6, Faizar Ali PW7, Musstt. Sabiran Begum, PW10, Musstt. Amiran Nessa and PW11, Mahtab Ali are hostile witnesses. The other category of witnesses are family members namely, PW1, Aziz Khan, PW2, Musstt Johura Khatoon, PW4, Aminul Khan and PW5, Miss Fatima Khatoon. On the otherPW3, Musstt. Formuda Begum, PW8, Musstt. Aimina Begum, PW9, Musstt. Halema Begum, PW12, Safikul Ali, PW14, Amirul Ali, PW16, Musstt. Asuram Begum, PW17, Kasim Ali, PW18, Firuz Khan, PW19, Musstt. Majiran Begum are independent witnesses and PW13, Dr. Ajanta Bordoloi, PW15, Mrs. G. Rabha and PW20, Arup Jyoti Baishya are official witnesses.

21. In the context of evidence of aforesaid four categories of witnesses and the arguments advanced by the rival parties, this court is required to examine whether the evidence available on record attracts the ingredients of offence U/S 366 A IPC and 4 of POCSO Act.

22. For the sake of convenience, charge under Section 366A IPC is taken up first.

23. In order to constitute the offence U/S 366 A IPC, the following ingredients must be established:-

(i) the accused induced the minor girl below the age of 18 years;

(ii) she was induced to go from any place to do any act, and

(iii) she was so induced with intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person.

24. Now, on perusal of the contents of FIR, Ext.4, it transpires that on 16.9.2014 Aziz Khan lodged an FIR in Panery police station alleging that on 15.9.2014 at about 8 pm Nantu Ali, S/o- Md. Faijar Ali of the same village allegedly kidnapped his minor daughter, aged about 14 years from his residence and kept her confined somewhere else so, she could not be traced out.

25. In order to substantiate the contents of the FIR, PW1, Aziz Khan, who is the informant cum father of the alleged victim girl, deposed that he know the accused person. On the day of occurrence his daughter was aged about 14 years. At about 10 PM she came out of the residence in response to call of nature but she did not return. They searched her. His wife also searched but she could not be traced out. Then he informed the matter to villagers. Some of

the boys told him that Amir Ali induced her to go with him. Then he lodged the FIR in Panery PS written by one Homeopathic doctor where he put his thumb impression. The FIR was written as per his version.

26. In his cross-examination, he clearly stated that he could not say the date of birth of his daughter. His daughter has been reading in school but he did not submit any school certificate. But he stated that the original copy of birth certificate of his daughter was with him. She was born on his own residence but he neither obtained the birth certificate immediately nor informed the hospital authority about her birth. He further deposed that birth certificate was later on applied by one person of Nepali community but how he obtained the same he do not know.

27. On the other hand, in evidence PW5, the alleged victim girl stated that at the time of incident in the year 2014 she was reading in class X and on the day of deposing her evidence she was carrying pregnancy for 4 (four) months. The incident occurred about 6/7 months back and on the day of incident while she was in the house at about 9.30 PM which she came out of residence in response to call of nature, accused forced her to go with him by holding her hands. She could not shout as the accused gagged her mouth and then committed rape on her. Thereafter, he took her to Rangia in the house of his maternal uncle where he kept her for four days and again committed rape there, but she could not disclose it to others because of shame. Then uncle of accused called them over phone promising to perform marriage through Kaji and she discussed this fact with accused. Thereafter, her father informed the matter to society as well as lodged FIR in Panery PS. Subsequently, Panery and Kalaigaon police brought them from road at Rangia. She also stated that she gave statement before Magistrate and she was examined by doctor. Ext.2 is her statement U/S 164 Cr.P.C. and Ext.2(1) is her signature. She also stated that as a result of sexual assault by accused she became pregnant for four months, but prior to the said rape accused did not have any excess on her.

28. In her cross-examination, she deposed that she could not remember her date of her birth and cannot say without going through her birth certificate. Probably year of birth was 2001, but she was told about this by her parents. She has no personal knowledge. She further reiterated in her cross-examination that prior to the date on which the accused committed rape, there was no such physical relation with accused.

29. In her statement before Magistrate U/S 164 Cr.P.C., she has not mentioned any date but stated that on the day of incident she was sleeping in her house but accused Amir Ali called her. When she came out, Amir Ali took her towards the river bank by force and committed rape on her. He then took her to Mangaldai by force where he kept her and again committed rape. Later on, police recovered her.

30. Now, on perusal of the evidence of doctor (PW13), who examined the victim girl on 22.9.2014 it is seen that on X-ray examination for age determination, her age was found approximate by 18 to 19 years and sonography report reveals single live fetus of 15 +_ 1 week.

31. In the present case, after scrutiny of the evidence of three vital prosecution witnesses namely, PW1, the informant, PW5, the victim girl and PW13, the doctor who examined her, it appears that there is huge contradictions and inconsistencies as regards the age of the victim girl. Both PW1 and PW5, father and daughter dau, stated that on the day of occurrence the age of the girl was 14 years and in her evidence in court, the victim girl stated that prior to the incident of rape there was no physical intimacy with accused person. But, evidence of doctor belied the version of victim as well as her father as the doctor on the date of examination on 22.4.2014 found the victim carrying pregnancy for about four months on the date of her examination.

32. As per version of the victim girl and contents of FIR, she was raped by accused on 15.9.2014 and FIR was lodged on 16.9.2014 and doctor

examined her on 22.9.2014 which clearly shows that doctor examined the victim girl after seven days of the alleged rape by accused person. If this be the fact, the evidence of the victim girl and her father is totally unworthy of credit as they suppressed the very material fact, because, according to the victim girl (PW5), she had no physical intimacy with accused prior to the date of her rape on 15.9.2014. But on the day of her examination by doctor she has been carrying pregnancy for about four months which is prima-facie impossible as physical intimacy between two male and female within seven days cannot make the girl pregnant for four months. Therefore, the very evidence of the victim as well as her father appears to be hugely concocted and exaggerated making their evidence totally unworthy of credit, particularly when neither informant nor the alleged victim girl has been able to prove the actual date of her birth. The evidence of father in his cross-examination makes the matter more confusing as according to him, he did not apply for birth certificate. One person of Nepali community obtained her birth certificate and how the said person obtain the birth certificate he do not know.

33. Moreover, the prosecution miserably failed to prove the original birth certificate of the girl to ascertain her date of birth. The consistent stand of the victim girl that she was about 14 years old at the time of occurrence is totally discredited by evidence of doctor (PW13) who found her age to be 18-19 years. Therefore, the actual age of the victim girl remained under the cloud of doubt as the father and daughter as well as other prosecution witnesses namely, PW2, Musstt. Jahura Khatoon and PW4, Amnul Khan, who are mother and brother of the victim girl, also failed to depose about the actual date of birth of the girl which means they also suppressed the vital fact regarding the age of the victim girl at the time of commission of the alleged offence. Therefore, on perusal of evidence of PW1, PW2, PW4 and PW5, who are all family members, it crystallizes that they adduced exaggerated and fabricated evidence by suppressing the material fact. As such, their evidence appears to be interested one.

34. In **1970(3) SCC 474 (Ramaphupala Reddy And Ors. vs The State Of Andhra Pradesh)** the Division Bench of Hon'ble Justices K Hegde and S Sikri of the Hon'ble Supreme Court held that **it is not the law that the evidence of interested witness is not entitled to any weight but their evidence has got to be scrutinized with care.**

35. **(2013)4 SCC 422 Sunil Kundu & Anr vs State Of Jharkhand** another Division Bench of Hon'ble Supreme Court consisting of Justices Aftab Alam and Ranjana Prakash Desai in para 22 observed that **"the evidence of an interested witness is not to be mechanically overlooked. If it is consistent, it can be relied upon and conviction can be based on it because, an interested witness is not likely to leave out the real culprit".**

36. If we analyse the evidence of the vital prosecution witnesses namely, PW1, PW2, PW4, PW5 and PW 13 in the context of the above referred two Supreme Court cases, it became crystal clear that the evidence of these four witnesses are interested one being family members. Their evidence do not inspire confidence as they failed to adduce credible evidence on vital aspect. Rather, they seem to have suppressed the actual date of birth of the victim girl.

37. Moreover, out of the twenty witnesses examined by prosecution, PW6, Faizar Ali PW7, Musstt. Sabiran Begum, PW10, Musstt. Amiran Nessa and PW11, Mahtab Ali were declared hostile. So, their evidence do not carry any evidentiary value. Though PW8, Musstt. Aimina Begum, PW9, Musstt. Halema Begum, PW12, Safikul Ali, PW14, Amirul Ali, PW16, Musstt. Asuram Begum, PW17, Kasim Ali, PW18, Firuz Khan, PW19, Musstt. Majiran Begum are independent witnesses, their evidence are also found unworthy of credit.

38. As it appears from the evidence of prosecution witnesses, the alleged victim girl was major on the day of incident and she voluntarily eloped with accused on her own, as her evidence in court and statement before Magistrate

U/S 164 Cr.P.C., are found totally inconsistent. In her statement U/S 164 Cr.P.C. she stated that accused had taken her to Mangaldai and in her evidence in court she stated that she was taken to Rangia. Moreover, she also failed to spell out her date of birth. Prosecution also failed to prove the birth certificate of the girl in court. Therefore, on the alleged day of incident she appears to be major as deposed by PW13, because as per radiological examination she was 18-19 years of age.

39. In view of the evidence discussed above, this court is of the clear view that none of the ingredients of Section 366A IPC has been attracted in the present case. The prosecution miserably failed to substantiate the charge for sustaining conviction against the accused person. Even though, the victim was carrying pregnancy for four months on the day of examination by doctor, this is the outcome of her consensual sex with accused person prior to the date of alleged incident otherwise, it is impossible to carry pregnancy for four months when the doctor examined her within seven days of the alleged incident. So it is crystal clear that the alleged victim girl suppressed the real fact and invented a new story to make out a false case. Therefore, this court comes to unerring conclusion that the prosecution has failed to establish the ingredients of the offence U/S 3 of POCSO Act for sustaining conviction U/S 4 of POCSO Act as the act indulged by the girl admittedly happened as a result of her lover affairs with accused and with her full consent. As such, it is unsafe to hold the accused on this count also.

40. In the result, accused is acquitted from the charges U/S 366A IPC and Section 4 of POCSO Act on the ground of benefit of doubt.

41. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

42. Let a copy of the judgment be sent to the learned District Magistrate, Udalguri for his information as provided in section 365 Cr.P.C.

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

44. Given under my hand and seal of this Court on this 13th day of March, 2020, at Udalguri.

Dictated & Corrected by me

(C.B. Gogoi)
Special Judge, Udalguri.

(C.B. Gogoi)
Special Judge, Udalguri.

APPENDIX

1. The prosecution has examined the following 20 nos. of witnesses :-

- PW1 Aziz Khan, the informant.
- PW2 Musstt. Johura Khatoon.
- PW3 Musstt. Formuda Begum
- PW4 Aminul Khan
- PW5 Te victim girl (X).
- PW6 FAizar Ali.
- PW7 Musstt. Sabiran Begum.
- PW8 Musstt. Aimina Begum.
- PW9 Musstt. Halema Begum.
- PW10 Musstt. Amiran Nessa.
- PW11 Mahtab Ali
- PW12 Safikul Ali
- PW13 Dr. Ajanta Bordoloi
- PW14 Amirul Ali
- PW15 Mrs. G. Rabha
- PW16 Musstt. Asuram Begum
- PW17 Kasim Ali
- PW18 Firuz Khan

PW19 Musstt. Majiran Begum

PW20 Arup Jyoti Baishya

2. The prosecution exhibited 10 documents :-

Ext.1 Seizure list

Ext.2 Deposition of Musstt. Fatima Khatoon

Ext.3 Medical report

Ext.4 FIR

Ext.5 Charge-sheet

Ext.6 Statement of witness Musstt. Johura Khatoon

Ext.7 Statement of witness Musstt. Sabiran Begum

Ext.8 Statement of witness Musstt. Amiran Nessa

Ext.9 Statement of witness Faizur Ali

Ext.10 Statement of witness Mahtab Ali

3. Material exhibit 1 Birth Certificate.

(C.B. Gogoi)

Special Judge, Udalguri.