

IN THE COURT OF SPECIAL JUDGE (POCSO)
NALBARI

SPL. (P) CASE NO. 16/2020

U/s 4 Protection of Children from Sexual Offences Act, 2012

R/W Sec. 363/ 376 (3) IPC

State of Assam

- Vs -

Jahir Khan @ Rahul Ali Accused

Present

Smti. Munmun B. Sarma

Special Judge (POCSO)

Nalbari

Counsel for Prosecution: Sri K K Sarma, Ld. Spl. PP

Counsel for Defence : Mr.T. Ahmed, Advocate

Evidence : 16/12/2021 & 20/12/2021

Argument : 20/12/2021

Judgment : 03/01/2022

JUDGMENT

1) On 19/05/2020 informant Nur Mahammad Ali lodged an ejahar before the O/C, Nalbari PS, stating inter alia that, on 18/05/2020 at about 11:00 AM his daughter (hereinafter

referred as victim or 'X') went to her friend's house at Amayapur, however, she did not return home. Informant searched for the victim and came to know that the one Rahul Ali of village Janigog induced her to go with him & then he confined her somewhere. Hence, FIR was filed.

2) On receipt of the FIR, O/C, Nalbari PS registered it as Nalbari PS Case No. 272/2020 u/s 365 of Indian Penal Code (hereinafter referred to as IPC) r/w s. 8 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. Accused and victim came to the thana themselves. The accused was forwarded to the Court & victim was sent for medical examination. 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 Jahir Khan @ Rahul Ali, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against the accused Jahir Khan @ Rahul Ali u/s 365/ 376 IPC r/w s.4 POCSO Act.

3) Cognizance was taken u/s 365/ 376 IPC r/w s.4 POCSO Act, and on receiving summon, the accused Jahir Khan @ Rahul 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 363/ 376 (3) IPC r/w s.4 POCSO Act, charge was framed under the aforesaid sections and the content of the offences were read over and explained to

accused Jahir Khan @ Rahul Ali, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 363/ 376 (3) IPC r/w s.4 POCSO Act against the accused, the prosecution side examined 3 witnesses, same being the informant, victim's mother & the victim herself. The 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 –**

i. Whether on 18/05/2020 at about 11:00 AM at village Janigog, the accused Jahir Khan @ Rahul Ali kidnapped the victim 'X' from her lawful guardianship, thus committing **offence u/s 363 IPC?**

ii. Whether on the same date, time and place, the accused Jahir Khan @ Rahul Ali committed rape upon the victim 'X', who is under the age of 16 years, and thus committing **offence u/s 376(3) IPC?**

iii. Whether on the same date, time and place, the accused Jahir Khan @ Rahul Ali committed penetrative sexual assault upon the victim 'X', who is below 18 years old, 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. Considering the limited evidence available in the recorded, the charges are discussed herein below together without losing their individuality.

7) **PW-3 (victim)** deposed that she and the accused were in love, but her family was not accepting the relationship. Hence, on the day of the incident she fled with the accused. She further deposed that the accused neither enticed her or induced her to go with him. She further deposed that the accused is completely innocent. **PW-1 Nur Mahammad Ali** is the informant & victim's father. **PW-2 Abeda Begum** is the victim's mother. Both of them deposed that the FIR was lodged due to a misunderstanding. The victim went with the accused on her own & and as she was minor they didn't agree to the relationship. They further deposed that the accused is innocent and didn't kidnap the victim.

8) Thus, all the above evidences reveal that the informant lodged the FIR due to a misunderstanding. Both the victim & her mother & her father (informant) has exonerated the accused from all charges. Thus, in view of the above discussions it is held that **prosecution failed to prove beyond all reasonable doubt that the accused Jahir**

**Khan @ Rahul Ali committed offence u/s 363/ 376 (3)
IPC r/w s.4 POCSO Act.**

ORDER

9) From the discussion made above, it is seen that prosecution failed to prove beyond all reasonable doubt the charge u/s 363/ 376 (3) IPC r/w s.4 POCSO Act against the accused Jahir Khan @ Rahul Ali. Hence, **accused Jahir Khan @ Rahul Ali is found not guilty and is acquitted from the charge u/s 363/ 376 (3) 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 **3rd January'2022.**

(Smti. Munmun B. Sarma)

Special Judge (POCSO)

Nalbari

APPENDIX

(A) Prosecution witnesses:

- i. PW 1: Nur Mahammad Ali (Informant)
- ii. PW 2 : Mrs Abeda Begum
- iii. PW 3 : Victim

(B) Prosecution exhibited documents:

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

(C) Defence witnesses : Nil.

(D) Defence exhibited document : Nil.

(Smti. Munmun B. Sarma)
Special Judge (POCSO)
Nalbari