

DISTRICT : BIRBHUM

(C.I.S. No.01/2016)

IN THE SPECIAL COURT OF PROTECTION OF CHILDREN FROM  
SEXUAL OFFENCES (POCSO), RAMPURHAT, BIRBHUM

Present : Abhijit Som  
Judge, Special Court(POCSO)  
Rampurhat, Birbhum

S.T. No. 62 / December / 2017  
Special Case No.01 / 2016

The State of West Bengal .... The Prosecution

: V E R S U S :

Babu Das .... The accused

Charge u/s 363/366A/376 I.P.C. and u/s 4/6 of POCSO Act

The Judgement Delivered On : **24th day of July, 2018**

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

This is a sessions trial under POCSO Act, 2012 arising out of Mayureswar P.S. Case no.218/2016 dt.29.08.2016.

The case commenced on the basis of a written complaint made by one Sadananda Mondal informing that her minor daughter aged about 15 years went to take bath in the pond and did not return home. He stated that in spite of search her daughter was not found out. He alleged that he later on came to know that the accused Babu Das, son of Sanatan Das of Fatepur enticing her daughter kidnapped her for illegal purposes.

On the basis of the written complaint police started Mayureswar P.S. Case no.218/2016 dt.29.08.2016 u/s 363/366A of I.P.C. The investigation of the case was done and during investigation it was found that the victim girl was minor. The investigation of the case was done by the police as they produced the V.G. before the Id.Magistrate with a prayer for taking her statement u/s 164 Cr.P.C. The V.G. was also produced before the doctor for her medical examination. However, in

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conclusion of investigation police filed charge sheet against the accused u/s 363/366A/376 I.P.C. and u/s 4/6 of POCSO Act. Cognizance was accordingly taken.

The case was taken up for hearing charge. Considering the charge sheet and documents annexed therewith and hearing both sides, this court was of the opinion that there was ground for presuming that the accused committed an offence and accordingly, the charge has been framed against him u/s 363/366A/376 I.P.C. and u/s 4/6 of POCSO Act. The contents of the charge was read over and explained to the accused and as he pleaded innocence, the instant trial commenced.

Now this court is to find as to whether the prosecution has proved the case to the satisfaction to bring home the offence against the accused.

Decision with Reasons

Prosecution adduced eight (08) witnesses and produced several documents and materials, which are marked Exbt.1 to 6 in the instant case.

The defence, on the other hand, did not adduce any evidence, but from the trend of cross-examination and reply given by the accused under section 313 Cr.P.C., the defence denied all allegations of the prosecution case.

PW-01 Sadananda Mondal stated in his evidence that the incident took place two years ago and on that day of incident his daughter went to the pond for taking bath. He stated that she did not return and therefore, they tried to find her out. The witness also deposed that village people informed

him that they saw her daughter talking with accused Babu Das. Accordingly written complaint was lodged at P.S. The witness proved his signature on the written complaint.

In the written complaint (Exbt.1) allegation was made against the accused for kidnapping the minor daughter of the defacto complainant. It was revealed during investigation that the victim was minor. The concerned school teacher (PW-05) Roji Ranjana Murmu stated that she issued the Exbt.5 which was a certificate of date of birth of the victim, a student of her school, showing the date of birth as 02.04.2001. So it was the case of the prosecution that a minor girl (child) was kidnapped by the accused for illegal purposes.

As per section 29 of the POCSO Act, whenever a person is prosecuted for committing or abetting or attempting to commit any offence u/s 3, 5, 7 & section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence as the case may be, unless the contrary is proved. As per section 30 of the POCSO Act, Special Court shall also presume the existence of culpable mental state in any prosecution for any offence under this Act which requires culpable mental state.

The V.G. (PW-02) coming before this court stated that her parents were negotiating her marriage and that is why she went to the house of her paternal grandmother. She stated that she remained at her paternal grandmother's house for

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(4)

15/16 days. Under cross-examination she also disclosed that she went to her paternal grandmother's house and came back home according to her own wish. During her evidence she admitted that she made her statement before the Id.Magistrate. The statement recorded by the Id.Magistrate indicated that she eloped with the accused as per her own wish and she resided with the accused as husband for the period of 13 days. However, under cross-examination she disclosed that she stated before the Id.Magistrate as tutored by police.

In this case it is found during the trial that the victim has been produced before the doctor for medico legal examination, but the victim as well as the mother of the victim has not given the consent for examination. It is fact that no prosecution witness has clearly stated before the court indicating that accused has committed an offence of sexual assault or sexual harassment upon the victim girl. The deposition of the victim before the court is completely opposite to the statement recorded by Id.Magistrate. The contradictory statement of the victim rebuts the presumption, if any, which may be formed against the accused as per POCSO Act. Actually prosecution has failed to shift his initial onus upon the accused.

On the other hand, from the evidence of the victim as PW-02, it appears that she has left her home as per her own will. Therefore, the essential ingredients of kidnapping is missing herein. PW-01 Sadananda Mondal, father of the victim, has stated in

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his evidence that her daughter has come back home on her own and she has told that she has gone to her maternal aunt's home.

In view of all, this court is of the view that the prosecution has miserably failed to prove the case and accordingly the accused deserves acquittal.

Hence, it is,

O R D E R E D

that the accused Babu Das is found not guilty of the charge punishable u/s 363/366A/376 I.P.C. and u/s 4/6 of POCSO Act and accordingly, he is acquitted u/s 235(1) Cr.P.C.

The accused be discharged from his bail bond.

The seized alat, if any, be destroyed after the period of appeal.

Dictated and corrected.  
Sd/-Abhijit Som  
Judge, Spl.Court(POCSO)

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Judge, Special Court (POCSO)  
Rampurhat, Birbhum