

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE CUM
SPECIAL JUDGE (POCSO),
MORIGAON.**

Present : **Smt. Angjeeta Mahanta, AJS,**
Addl. Sessions Judge cum
Special Judge (POCSO),
Morigaon.

This the 13th day of December, 2022.

POCSO Case No. 160 of 2022.

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	Mr. A. Bishaya, learned Special P.P.
ACCUSED	Md. Ashadul Islam, Son of Md. Jaynal Abeddin, Vill.- Bagali Para Pathar, P.S. Laharighat, Dist. Morigaon.
REPRESENTED BY	Mr. Nakib Uddin Ahmed, learned Defence Counsel.

POCSO Case No.160 of 2022.

Date of Offence	16.07.2022
Date of FIR	28.07.2022
Date of Charge sheet	22.09.2022
Date of Framing of Charges	20.10.2022
Date of commencement of evidence	29.11.2022
Date on which judgment is reserved	29.11.2022
Date of Judgment	13.12.2022
Date of the Sentencing Order, if any	N/A

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A1	Md. Ashadul Islam	12.08.2022	30.11.2022	U/S 366/342/376(3) of IPC r/w Section 4 of the POCSO Act.	Acquitted	N/A	N/A

J U D G M E N T

1. The prosecution case in brief is that on 16.07.2022 in the night at about 11:00 p.m. when the minor victim daughter (name is read out) of the informant came outside of her house to attend nature's call, the accused A1 forcefully took her away by gagging her mouth with a cloth. The accused A1 took her to the house of

one Kabar Uddin and kept her at the house of the said Kabar Uddin for one night where he committed rape upon her. On 17.07.2022 the other FIR named accused persons handed over the victim to the informant and told him that they would settle the matter. Hence this case.

2. Accordingly, on receipt of the FIR, the O/C Laharighat P.S. registered Laharighat P.S. Case No.295/22 U/S 365/376(3) of IPC r/w Section 6 of the POCSO Act and investigation commenced. During the course of investigation, the I.O. visited the place of occurrence and drew up a sketch map of the place of occurrence, sent the victim to STHG Civil Hospital, Morigaon wherein she was medically examined and got the statement of the victim recorded by the Magistrate u/s 164 Cr.P.C. The I.O. also examined the witnesses and recorded their statements, arrested the accused and on completion of investigation the I/O submitted charge sheet against the present accused U/S 365/376(3) of IPC r/w Section 6 of the POCSO Act.

3. In due course, upon production of the accused person and after hearing both sides this Court framed formal charges U/S 366/342/376(3) of I.P.C. r/w Section 4 of the POCSO Act against the

present accused person. The charges having been read over and explained the accused person pleaded not guilty and claimed to be tried.

4. During trial the prosecution examined 2 (two) witnesses including the victim in order to establish its case. Statement of the accused person u/s. 313 Cr.P.C. is dispensed with as there was no incriminating evidence against him.

5. I have heard argument of Ld. Special P.P. and the Ld. Defence Counsel for the accused person and perused the materials on record.

6. Points for determination:-

(i) Whether the accused A1 on 16.07.2022 at about 11:00 p.m. at Village- Bogolipara Pathar Kadamtal under Laharighat P.S. kidnapped the victim (name is read out) i.e. the daughter of the informant in order that or knowing it to be likely that she will be forced or seduced to illicit intercourse, as alleged?

(ii) Whether the accused A1 after kidnapping wrongfully

confined the aforementioned victim (name is read out) i.e. the daughter of the informant in his house at Bogolipara Pathar, as alleged?

(iii) Whether the accused A1 after kidnapping committed rape upon the aforementioned victim (name is read out) i.e. the minor daughter of the informant aged about 13 years, as alleged?

(iv) Whether the accused A1 after kidnapping committed penetrative sexual assault upon the aforementioned victim (name is read out) i.e. the minor daughter of the informant, as alleged?

DISCUSSION, DECISION AND REASONS THEREOF

7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in the points for determination.

8. PW-1 (name is read out) who is the victim of this case deposed in her evidence that the informant is her mother and that she knows the accused Md. Ashadul Islam (A1) with whom she had love relation. She also deposed that the occurrence took place about 3 months back at about 11:00 p.m. and that at the time of occurrence she was talking with the accused A1 near his house and seeing both of them her mother got suspicious that they were doing some bad acts and hence she lodged the FIR against the accused A1 along with other FIR named accused persons at Laharighat P.S. She added that thereafter, police sent her to STHG Civil Hospital, Morigaon for her medical examination wherein she was medically examined and that after that police produced her before Morigaon Court for recording her statement U/S 164 Cr.P.C. She has proved Exhibit-P-1/PW-1 as her statement U/S 164 Cr.P.C. wherein Exhibit-P-1(1)/PW-1 and Exhibit-P-1(2)/PW-1 are her signatures. She also added that she was given in zimma to her mother by Morigaon Court. PW-1 testified that at the time of occurrence her age was 13 years and she was studying in class-VIII at Bogolipara Pathar M.E. School.

In her cross-examination by the defence, the PW-1 had stated that she gave statement before the Magistrate at the

instruction of her relatives. She also stated that the accused A1 did not commit any bad act with her. She further stated that she has no grievance against the accused A1.

9. PW-2 (name is read out) who is the informant of this case deposed in her evidence that she knows the accused Md. Ashadul Islam (A1) who is her immediate neighbor and that the victim is her daughter. She also deposed that the occurrence took place about 4 months back at about 11:00 p.m. and that at the time of occurrence she was present in her house and her victim daughter was talking with the accused A1 near their house and that seeing them talking she suspected that the accused A1 might have committed some bad acts with her victim daughter and hence she lodged the FIR against the accused A1 along with other FIR named accused persons at Laharighat P.S. She has proved Exhibit-P-2/PW-2 as the FIR wherein Exhibit-P-2(1)/PW-2 is her signature. She added that thereafter, police sent her victim daughter to STHG Civil Hospital, Morigaon for her medical examination wherein she was medically examined and that after that police produced her victim daughter before Morigaon Court for recording her statement U/S 164 Cr.P.C. and that her victim daughter was given in zimma to her by Morigaon Court. PW-2 testified that at the time of occurrence the age of her victim

daughter was 13 years and she was studying in class-VIII at Kodomtola School. She deposed that police seized the original Birth Certificate of her victim daughter vide seizure list (MR No. 226/22). She has proved Exhibit-P-3/PW-2 as the Seizure List wherein Exhibit-P-3(1)/PW-2 is her signature. She further deposed that Police returned the original Birth Certificate of her victim daughter to her after keeping Xerox copy of the same. She added that on the day of recording of her evidence she produced the original Birth Certificate of her victim daughter before the Court which is returned to her after keeping a Xerox copy (compared with original) of the same. She has proved Exhibit-P-4/PW-2 as the Xerox copy (compared with original) of the original Birth Certificate of her victim daughter.

In her cross-examination by the defence, the PW-2 had stated that the accused A1 did not commit any bad act with her victim daughter. She also stated that she has no allegations against the accused A1.

10. From the above evidence, it is apparent that the instant case had been lodged by the informant on misunderstanding as is evident from the depositions of the alleged victim i.e. PW-1 and the mother of the alleged victim i.e. the informant i.e. PW-2. The

informant and the alleged victim did not implicate the accused during their testimonies before the Court as regard to the charges against the accused A1.

11. From the above discussion, there is no indication that the accused A1 kidnapped the alleged victim in order that or knowing it to be likely that she will be forced or seduced to illicit intercourse or that the accused A1 wrongfully confined the said alleged victim or that the accused A1 committed rape upon the alleged victim or that the accused A1 committed penetrative sexual assault upon the said alleged victim. On consideration of the evidence on record, I am unable to hold that there is sufficient evidence before the Court to return a finding of guilt against the accused person and the points are therefore answered accordingly.

12. In view of the aforesaid evidence discussed, I hold that the charges against the accused person are not established. The prosecution has failed to prove its case beyond reasonable doubt and the presumption against the accused A1 is rebutted. Consequently, the accused person is acquitted of the offences U/S 366/342/376(3) of I.P.C. read with Section 4 of the POCSO Act. He

be set at liberty forthwith.

13. The Bail bond shall remain in force for a further period of six months from today in view of Section 437A Cr.P.C.

Given under my hand and seal of this Court on this the 13th day of December, 2022.

Addl. Sessions Judge cum
Special Judge (POCSO),
Morigaon.

Dictated & corrected by me

Addl. Sessions Judge cum
Special Judge (POCSO),
Morigaon.

Dictation taken & transcribed by Ankita Bharali.

APPENDIX-14**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A.PROSECUTION:**

RANK	NAME	NATURE OF EVIDENCE
PW1	The victim (name is read out).	Victim
PW2	Mother of the victim (name is read out).	Informant

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

C. Court Witnesses, if any: NIL.**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution:**

Sr. No.	Exhibit Number	Description
---------	----------------	-------------

1	Exhibit 1/PW1	P-	Statement of the victim recorded u/s 164 Cr.P.C.
2	Exhibit 2/PW2	P-	FIR.
3	Exhibit 3/PW2	P-	Seizure List.
4	Exhibit 4/PW2	P-	Xerox copy (compared with original) of the original Birth Certificate of the victim.

B. Defence: NIL.

C. Court Exhibit: NIL.

D. Material Object: NIL.

Addl. Sessions Judge cum
Special Judge (POCSO),
Morigaon.