

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**:::UDALGURI**

**Present : Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Special (POCSO) 23/2019**

**U/S 366-A/344 I.P.C., R/W Section 6 of POCSO Act**

**State of Assam**

**-Vs-**

**Athel Basumatary.....Accused.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. D.K. Boro, Learned Advocate.

Date of Evidence : 14-08-19: 28-08-19.

Date of Argument : 29-08-2019.

Date of Judgment : 29-08-2019.

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

1. The prosecution case in brief is that on 09-05-17, at about 01 pm, the accused took away the victim girl, who was aged about 16 years at that time, and kept her confined in his house. Later on, the family members of the victim rescued her from the house of the accused. Thereafter, on 20-05-17, the father of the victim lodged the FIR with the In-charge of Bhairabkunda Outpost. On the basis of the FIR, Udalguri P.S Case No. 100/17, U/S 366-A/344 IPC was registered. Later on Section 376(3) IPC R/W Section 6 of POCSO Act was added and after completion of

investigation Police submitted charge-sheet U/S 366/344/376(3) IPC, R/W Section 6 of POCSO Act against the accused person Athel Basumatary.

2. The learned Special Judge vide Order dated 22-07-2019, transferred the case to this court for disposal.
3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused had committed offences under Section 366-A/344 I.P.C., R/W Section 6 of POCSO Act charges were framed there under and the ingredients of charges under Section 366-A/344 I.P.C., R/W Section 6 of POCSO Act were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
4. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
5. The prosecution in order to prove its case examined the following 3(three) witnesses:
  - PW1- Ranjit Daimari.
  - PW2- Victim-A.
  - PW3- Dr. Lakhan Ch. Boro.
6. Situated thus, the point for determination in the instant case are set up as follows:-
  - (I) Whether the accused person induced Victim-A who is a minor girl under the age of 18 years to go with him to another place with intent that she may forced or seduced to illicit intercourse with him?
  - (II) Whether the accused person wrongfully confined victim-A for ten days?
  - (III) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A aged about 16 years?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defense counsel Mr. Tarun Ch. Boro. Learned defence counsel has argued that the ingredients of Section 366-A/344 I.P.C., R/W Section 6 of POCSO Act have not been established in the present case against the accused person.
8. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
9. PW1, Ranjit Daimari, informant of this case and father of the victim girl. In his evidence PW1 had deposed that in the year 2017, the occurrence took place. On the date of occurrence, his daughter victim-A eloped with accused Athel Basumatary. Then PW1 lodged FIR with the Police. After one week, Police rescued his daughter from the house of the accused. The victim was produced before the Magistrate for recording her statement. PW1 took custody of his daughter from the court. The accused was arrested by the Police and forwarded to the court. Later on, accused was released on bail. After one month, again his daughter eloped with the accused and got married with him. Since then the victim had been living her conjugal life with the accused. They had a girl child. At the time of incident, his daughter was aged about 19 years. Ext-1 is the FIR. Ext-1(1) is the signature of PW1. In cross-examination, PW1 had revealed that his daughter had love affairs with the accused. The victim went with the accused on her own volition.
10. PW2 is victim-A. In his evidence PW2 had deposed that she had love affairs with the accused. About three years ago, she eloped with the accused and went to his house. Then her father lodged the FIR. After 10

days, she was produced before the Magistrate by the Police. PW2 statements had been recorded by the Magistrate U/S 164 Cr.P.C. The accused was arrested by the Police and he was sent to judicial custody. After his release from judicial custody on bail, PW2 got married with the accused and started her conjugal life with him. Now she is mother of a girl child. At the time of incident, she was aged about 18 years. Ext-2 is the statement recorded U/S 164 Cr.P.C. Ext-2(1) and 2(2) are the signatures of PW2. In cross-examination, PW2 had stated that since, before elopement with the accused she had love affairs with him. The accused did not use force on her to go with him. PW2 solemnized marriage with accused by performing rites and rituals of social marriage.

11. The witness (PW2) is not conversant with any other language other than Bodo language. Hence evidence of the witness had been recorded with the help of interpreter Miss Rupeswari Daimari, Court peon of this court. The interpreter is also administered oath before recording the evidence of the witness.
12. PW3 is Dr. Lakhyan Kumar Boro. In his evidence PW3 had deposed that on 20-05-2017,. he examined victim-A at Udalguri Civil Hospital vide reference Udalguri PS case no 100/17. On examination he found the following:
  - Height: 156 cm.
  - Weight: 51 kg.
  - Teeth: 28 numbers.
  - Breasts: developed
  - Auxillary Hair: present
  - Pubic hair: present
  - Vaginal injury: not seen
  - Hymen: absent
  - Marks of violence: not seen
  - Clothing: white blouse, red dokhona, pink/black ribbon.
  - LMP : 17/05/17

Smear examination vide Regd. No. Mangaldoi Civil hospital OPD-6670 Reported by Pathologist – Mangaldoi Civil hospital shows no spermatozoa seen in this slide.

X-ray examination of the right wrist, elbow and iliac crest vide plate No. RXIC 4228 dated 22-05-17 reported by Radiologist Dr. A. Deka, MD shows-

The radiological age– APPROXIMATE AGE 20-22 (twenty to twenty-two) years.

- Right wrist joint- Epiphyseal union completed.
- Right elbow joints- Epiphyseal union completed.
- Right iliac crest – Epiphyseal union completed.
- Urine for pregnancy (BHCG) test on – 22/05/17 reported by RASHMI CLINICAL LABORATORY shows –ve (negative).
- Ultrasonography of Abdomen on – 22/05/18 by sinologist Dr. A. Deka, MD reported as REVEALS NORMAL ECHOFEATURE OF ORGANS IMAGED.

PW3 had deposed that in his opinion

1. Approximate age 20-22 (Twenty to Twenty Two) years.
2. Urine for pregnancy test is negative (-ve)
3. USG reveals normal echo feature of organs.
4. No spermatozoa seen in vaginal smear.

Ext-3 is the medical report and Ext-3(1) is the signature of PW3.

Cross-examination of PW3 had been declined by the defence.

13. On appraisalment of the evidence on record, it appears that there is no evidence available on record that victim was forcibly taken away by the accused or wrongfully confined. PW1 and PW2 are the principle and material witnesses of the case. PW1, the father of the victim girl, had clearly revealed in cross-examination that his victim daughter had love affairs with the accused and the victim went with the accused on her own volition. It is also found from the evidence on record that after filing of the FIR, the accused was arrested by the police and when he was released on

bail the victim (PW2) again eloped with him, got married and started her conjugal life with the accused. Now both the accused and victim are blessed with a girl child. With regard to age of the victim, PW1 had specifically stated that at the time of incident his daughter was nineteen years old. The victim (PW2) also revealed in her deposition that at the time of incident she was aged about 18 years corroborating with her father (PW1). Medical evidence also reveal that at the time of incident the approximate age of the victim was 20-22 (Twenty to Twenty Two) years. Thus there is clear and unequivocal evidence to show that at the time of incident the victim was more than eighteen years as such has attained the age to give a valid consent. The victim being a major woman had consented voluntarily to go with the accused. As such there is no evidence to show that the accused kidnapped the victim from the custody of her lawful guardianship with intent to force or seduce her to illicit intercourse with him or with any other person or wrongfully confined her. Therefore, no offences under Section 366-A/344 IPC R/W Section 6 of POCSO Act are made out against the accused person.

14. In view of above discussion it appears that the prosecution has failed to prove the charges under Section 366-A/344 IPC R/W Section 6 of POCSO Act against the accused Athel Basumatary beyond all reasonable doubt.
15. Situated thus the points for determination are decided in the negative and against the prosecution.

### **ORDER**

16. In the result, the accused Athel Basumatary is found not guilty under Section 366-A/344 IPC R/W Section 6 of POCSO Act and acquitted of charges under Section 366-A/344 IPC R/W Section 6 of POCSO Act, and set with liberty forthwith.

17. Bail bond executed by the accused Athel Basumatary and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.
18. Judgment is signed, delivered and pronounced in the open court today the 29<sup>th</sup> day of August, 2019.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**IN THE COURT OF ADDL. SESSIONS JUDGE:.....UDALGURI.**

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**APPENDIX**

(A) Prosecution Exhibits :

Ext.-1 : FIR.

Ext.-2 : Statement of Victim U/S 164 Cr.P.C.

Ext.-3 : Medical report.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Ranjit Daimari.

PW2- Victim-A.

PW3- Dr. Lakhon Ch. Boro.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)  
Addl. Sessions Judge.  
Udalguri.