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# Special (POCSO) Case No.14/2019.

U/S - 366(A) of the IPC read with Sec. 4 of the POCSO Act.

#### State

- Versus -

Bikram Bhuiya

..... Accused.

PRESENT :- Shri D. Bhattacharjee,
Special Judge, Hailakandi.

#### Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri F.I. Barbhuiya, Ld. Advocate.

Date of recording evidence

:- 02.07.2019.

Date of recording statement u/s 313, CrPC

:- 05.07.2019.

Date of Argument

:- 05.07.2019.

Date of Judgment

:- 05.07.2019.

#### JUDGMENT

- 1. The prosecution case, in brief, is that on 26.10.2018 the informant Swapan Hazra lodged an ejahar with the O/C, Lala Police Station alleging that on 25.10.2018 at about 5 AM his minor daughter i.e. the victim went missing from his house and as such, he made vigorous search for her but could not find her out but subsequently, he came to know that the accused person Bikram Bhuiya kidnapped his daughter.
- 2. On receipt of the ejahar, the same was registered as Lala Police Station case No. 524/2018 under Sec. 120(B)/366/417/294/506, IPC and

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during investigation, police visited the place of occurrence, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC and after completion of investigation submitted charge sheet against the accused person Bikram Bhuiya under Sec. 366(A) of the IPC.

- 3. On appearance of accused person Bikram Bhuiya, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Bikram Bhuiya under Sec. 366(A) of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined the informant and the victim of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- Heard argument of both sides. Perused the record.

### **POINTS FOR DETERMINATION:-**

(i) Whether the accused person on 25.10.2018 at about 5 AM at Kaiya T.E. under Lala PS induced the victim, the daughter of the informant Swapan Hazra, to go with him with intent that she may be or knowing that she will be forced or seduced to illicit intercourse and thereby the accused committed the offence punishable under Sec. 366(A), IPC?



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(ii) Whether the accused person after taking the victim forcefully, committed penetrative sexual assault on her and the accused thereby committed the offence punishable under Sec. 4 of the POCSO Act?

# **DISCUSSION, DECISION AND REASONS THEREOF:**

The PW. 1, the victim, has deposed that about 3/ 4 months back, one day at about 5 AM, without informing her parents, she went to her relative's house at Katlicherra with the accused, who is her related brother and she returned home at 8 PM and then, she came to know that her father, the informant, lodged a case. Police got her medically examined and also got her statement recorded by Magistrate vide Ext. 1, wherein Ext. 1(1) is her signature. It is further deposed by the victim that she has got no allegation against the accused.

In cross examination, the victim has stated that she made her statement before Magistrate on being tutored by her father.

about 2/3 months back, one day in the morning, he did not find his daughter i.e. the victim in the house and accordingly, he made search for his daughter but with no effect and out of suspect, he lodged the FIR vide Ext. 2, against the accused person but thereafter, at about 8 PM his daughter returned home.

In cross examination, the informant has stated that he has got no allegation against the accused person.

In the instant case, the evidence of the victim is of much importance in deciding the case. In her evidence she has made the fact clear that on the relevant day in the early morning without informing her parents, she went to the house of her relative with the accused, who is her related brother and she returned home at 8 PM on that very day and then, she came to know that her father lodged a case. In cross examination, the victim has revealed that she made statement before the Magistrate on being tutored by her father, the informant. The PW. 2, the father of the victim, keeping himself in the same footing as of the victim, has vividly stated



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in his evidence that as he did not find his daughter in the house, he lodged the case on suspect but subsequently at about 8 PM on that very day, his daughter i.e. the victim returned his house. As such, when the victim herself as well as the informant has not supported their own case, I do not find any cogent reason to hold the accused person guilty for the commission of the offence, alleged.

- **10.** Accordingly, it can be safely held that the prosecution failed to prove its case against the accused person of the instant case.
- 11. The accused person Bikram Bhuiya is acquitted of the offence charged under Sec.366(A) of IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- **12.** The bail bond of the accused stands discharged.
- **13.** Send a copy of this judgment to the Ld. District Magistrate, Hailakandi.

The judgment is delivered today, on this the 5<sup>th</sup> day of

July,2019.

Special Judge, Hailakandi.

HARLAKANDI

Dictated and corrected by me :-

Special Judge, Hailakandi.

Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.

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Appendix :-

Oral evidences :-

PW. 1, the victim.

PW. 2, Swapan Hazra, the informant.

Documentary evidences :-

Nil.

Defence did not adduce any evidence.

Special Judge, Hailakandi