5pt (0005(S-S)/2019 Date: 24.04.2019

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, SIVASAGAR

Present :- Sri B. Roy, AJS Special Judge, <u>Sivasagar</u>.

Spl.(P) Case No. 05 of 2019, U/S 366/34, 376 DA of IPC r/w sec. 6 of POCSO Act

State of Assam
-Vs
Sri Suresh Munda @ Huntu

APPEARANCE:

For the prosecution

Mr. S. Gogoi, Spl.P.P.

For the accused

Sk. Shamsher,

& Abidhur Rahman, Advocates

Date of evidence
Date of Argument

02.03.19,15.03.19,01.04.19,

Date of Argument Date of Judgment 12.04.2019, 24.04.2019,

JUDGMENT

- 1. The case of the prosecution is that the informant who is the father of the minor victim lodged an FIR in the Nazira Model Police station on 20.11.2018 stating that on 17.11.2018 at about 7.00 p.m. his minor daughter Smt. 'X' (name withheld)aged about 15 years was kidnapped by the accused Suresh Munda and some others from in front of his house while she returned from market. The informant further alleged that the accused committed rape on his daughter and in the next morning at about 6.00 a.m. she was found in a shed of a nearby house.
 - 2. The OC of Nazira Police station received the said FIR and registered vide Nazira P.S. case no. 238/2018 u/s. 376 D of IPC read



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with section 6 of POCSO Act.

- Copy of relevant documents as required under Section 207 Cr.P.C. were furnished to the accused. Charge U/S 366/34 IPC, 376 DA IPC r/w section 6 of POCSO Act were framed and read over to the accused to which he pleaded not guilty.
- 4. In the course of rial prosecution side examined 7(seven) witnesses. The defence plea is of denial.
- 5. The accused was examined U/S 313 Cr.P.C.
- 6. I have heard argument of learned counsel of both sides and perused the materials on record.

7. THE POINTS FOR DETERMINATION IN THIS CASE ARE:-

(I) Whether accused person committed the offence as alleged in the FIR ?

DECISION AND REASONS THEREOF:

8. The PW-1 is the informant/father of the victim girl. He stated that the victim is his daughter and she is aged about 15 years. He stated that on 17.11.2018 he went to garden office for receiving his salary. He also stated that he knows the accused person. The PW-1 stated that on the date of occurrence his wife went to Moran. He stated that his daughter was alone in the house. At about 7.00 p.m. he reached home but did not find his daughter in the house. Then he searched her in the neighbouring area but could not trace her out. On the next day he found his daughter in a shed near the house of his aunt in an unconscious state. Immediately he brought her daughter and gave her preliminary treatment. After regaining her sense his daughter informed that at the time of the occurrence while she was opening the lock of the house after returning from market, two persons came from behind and put something on her mouth and nose and she became senseless. He stated that his daughter could not identify those persons. Then he lodged the FIR which is marked as



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Ext. 1 wherein Ext. 1(1) is his signature. During investigation police seized the cloths of his daughter and took signature in the seizure list which is marked as Ext. 2 wherein Ext.2(1) is his signature. The PW-1 also exhibited the seized clothes which are marked as M. Ext.1 and M. Ext.2.

In cross examination PW-1 admitted that the present age of his daughter may be 19 ½ years. He also admitted that he does not know the name of the writer of Ext.1 and the contents of Ext.1. The PW-1 stated that he gave the clothes of his daughter from his house on being asked by the police. He also admitted that thee are other houses adjacent to his house as he lives in a garden quarter. The PW-1 admitted that did not mention the cause of delay in lodging the FIR. Ultimately the PW-1 admitted that he lodged the FIR on suspicion.

9. The PW-2 is is the victim girl. She stated that the incident took place on 17.11.2018 at about 6.00 p.m. after she returned from market. She was standing near the door of their house for opening the lock and at that time three boys came and caught her. She was tied with clothes. They put something in her nose and mouth and she became unconscious. On the next day when she regained her sense, she found herself lying in the shed/varanda of the house of Garmoni. She stated that she does not remember what had happened at night as she was unconscious. The PW-2 stated that her statement was recorded in the court which is marked as Ext.3 wherein Ext.3(1) and 3(2) are her signatures.

In cross examination she clearly stated that she has deposed whatever she knew. She also stated that she deposed in the similar manner before the Magistrate during investigation.

10. The PW-3 Suresh Nag in his evidence stated that he heard from the villagers that the victim was found in a senseless state in the house of Garmoni Kondha. He admitted that he does not remember

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the name of the person whom from he heard about the incident.

- 11. The PW-4 Garmoni Kondha in her evidence stated that after returning home on Monday from the house of her sister she heard from villagers that the victim was kept tied in the veranda of her house. She stated that on being asked the victim informed her that some persons kept her tied with rope.
- 12. The PW-5 Tabita Kondopan stated in her evidence that she went to the house of Garmoni and found the house locked. She heard some sound and then saw there the victim lying in the nearby "Chali" of the house. She was tied with rope. She was not in a position to speak. The PW-5 stated that she did not ask the victim subsequently about the incident.
- 13. The PW-6 Hemant Tanti in his evidence stated that at the time of incident he was in the house of his father in law. Later on he came to know from the parents of the victim that she was found tied with rope.
- 14. The PW-7 Anand Sarma in his evidence stated that during investigation police took his signature in the seizure list which is marked as Ext. 4 wherein Ext.4(1) is his signature. He also stated that his signature was taken in the "Jimmanama" which is marked as Ext. 5 wherein Ext.5(1) is his signature.
- 15. After examination of the 7 (seven) prosecution witnesses the ld. Spl. P.P. prayed to close the prosecution evidence and accordingly the prosecution evidence was closed after hearing the ld. Addl. P.P. and upon perusal of the materials available on record.
- 15. From perusal of the evidence as discussed above it appears that he victim and the other prosecution witnesses did not utter a single word against the accused person. From perusal of the evidence on record it also appears that the victim clearly stated in her evidence that she could not identify the boys who had kidnapped her. In the course of trial prosecution side miserably failed to establish the



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identity of the accused. In view of the above it is held that the prosecution side had failed to establish the case against the accused person . Accordingly the accused is held not guilty. As such, accused is acquitted and set at liberty forthwith.

- 14. Dispose the seized article, if any in due time as per provision of law.
- 15. Bail bonds executed by the accused and his surety are extended for six months from today U/S 437-A Cr.P.C.

Given under my hand & Seal of this Court on this the, 24th day of April, 2019 at Sivasagar.

Addl. Sessions Judge.

APPENDIX

1. Prosecution witnesses:

P.W.1 - Sri Daud Takri (Informant)

P.W.2 - Victim 'X'

P.W.3 - Suresh Nag,

P.W.4 - Garmoni Konda, P.W.5 - Tabita Kondopan,

P.W.6 - Hemant Tanti,

P.W.7 - Anand Sarma,

2. Defence witnesses - None

3. Court witnesses -None

4. Exhibits by prosecution -

Ext.1 - FIR

Ext.2 - Seizure list,

Ext.3 -Statement of the victim recorded U/S 164 Cr.P.C.

Ext.4 -Seizure list,

Ext. 5 - 'Jimmanama'

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