# IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.03 of 2018

(U/S 366 IPC and Sec. 4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of Assam	Complainant.
Julie 01 Assaill	Complainant

#### -Versus-

Krishan Rabidas alias Krishna	Accused person.
P.Ws. examined on:	13/6/18,6/8/18,11/1/19
Argument heard on:	29/8/19.
Judgment propounced and delivered	d on:- 11/9/19

### **Counsel Appeared:**

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr. D.K. Ghosh, Advocate.

### **JUDGMENT**

1. The prosecution case, in brief, is that the informant lodged an FIR before the O/c Udharbond PS stating the facts that on 1.4.17 at about 2 p.m. the accused kidnapped the minor daughter of the informant on inducing her. The informant during search of her daughter came to

know that the accused along with her daughter had appeared before the police station. The informant went to the police station and found the accused person along with his daughter.

- 2. On receipt of the FIR, case was registered vide Udharbond P.S. Case No.65/17 U/S 366(A) of IPC. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The victim girl was also sent to SMCH, Silchar for medical examination. The investigating officer visited the place of occurrence and prepared a rough sketch map. He also recorded statement of the witnesses and subsequently after completion of investigation submitted charge sheet against the accused U/S 366 IPC read with Section 4 of POCSO Act.
- 3. The offence Sec.4 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial after filing of the charge sheet. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 366 IPC and Section 4 of POCSO Act was framed by my predecessor in office against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether the accused kidnapped the victim Purnima Rabidas with the intent that she might be compelled or knowing that it to be likely that she will be compelled to marry against her will or that she might be forced or seduced to illicit intercourse, as alleged?
- (2) Whether the accused committed penetrative sexual assault on the victim girl, as alleged ?
- 5. From the prosecution side as many as 5 witnesses have been examined including the informant and the victim. The defence side has examined none. The statements of the accused person was recorded U/S

313 Cr.P.C. where the accused person denied the allegations against him. Defence declined to adduce evidence.

6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

#### DISCUSSIONS, DECISIONS AND REASONS THERE-O

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 point for determination.

PW.1, Arjun Rabidas is the informant of this case. He deposed in his deposition that about one and half years back at about 3 p.m. the occurrence took place. On the date of occurrence at about 8 p.m. police informed him that his daughter Purnima and the accused Kishan Rabidas had surrendered in Udharbond PS. Purnima was missing on the same day and at the time of occurrence her age was 15 years only. Purnima told PW.1 that she had gone with the accused who took he away from her house. Before this occurrence also on earlier occasion the accused had kidnapped Purnima and she was recovered from his house. PW.1 lodged Ejahar vide Ext.1 and Ext.1(1) is his signature. At the time of occurrence Purnima was a student of class-VI.

PW.1 in his cross examination stated that prior to the incident of this case the victim went away with the accused earlier and he brought back her, and that as the parents of the accused did not accept his daughter as their daughter-in-law PW.1 lodged this FIR. PW.1 also specifically stated in his cross examination that the accused neither induced his daughter nor kidnapped her and it was decided that his daughter would be given marriage with the accused in due time. PW-1 also stated in his cross examination that his daughter went to the house of the accused at her own will and PW.1 has no grievance against the

accused.

8. PW.2, the victim Purnima Rabidas deposed in her deposition that at the time of occurrence i.e. about one year back from her date of deposition at about 12 p.m. she was in her home wherefrom being accompanied by the accused she went to Udharbond Kachakanti Mandir and there the accused put vermilion on her forehead. Thereafter, herself and the accused surrendered in the Udharbond P.S. and her father PW.1 lodged and FIR with the Udharbond PS. She further deposed that at the time of occurrence she was a student of Arkatipur Basic School in class VI/VII.

PW.2 stated in his cross examination that prior occurrence of this case earlier she went with the accused and on the date of occurrence she went to the house of the accused and there the parents of the accused did not agree to accept her as their daughter in law and thereafter they solemnized their marriage with the help of a priest at Udharbond and accused put vermilion on her forehead. She further stated in her cross examination that thereafter they went to P.S. and informed that they got married. She categorically stated in her cross examination that accused did not induce or kidnap her nor committed any bad act with her. The matter has been amicably settled by the elders of both the parties and she has no grievances against the accused.

9. PW.3 Moyna Rabidas deposed in his deposition that on the date of occurrence at about 8 p.m. on being called by Udharbond PS he went there along with the guardians of accused Kishan Rabidas and the victim Purnima Rabidas and came to know that Purnima and Kishan after performing marriage in Kachakanti Mandir had surrendered in the Udharbond PS. He further deposed that thereafter as per instruction of Udharbond police he handed over Purnima to Ujjala home and at that

time the accused was arrested.

PW.3 in his cross examination stated that the matter has been amicably settled between both the parties to the effect that in due course after attaining majority the victim will be given in marriage with the accused.

- 10. PW.4 is the Medical Officer, Dr. Monalisa Dev who on 2.4.17 examined the victim Purnima Rabidas on police requisition and PW.4 deposed that the alleged victim gave a history that she was in relationship with Krishna Rabidas since one year and willfully ran away with the boy and went to Kachakanti Mandir and got married and went to the house of that boy and father of the boy told them to go to the police station. PW-4 also deposed that after examination of the victim girl she was of the opinion that the age of the individual is above 14 and below 16 years, evidence of recent sexual penetration not detected as on date of examination, injury marks not detected on her body/genitals except old hymenal tears and the individual does not carry pregnancy.
- 11. PW-5 Taibur Rahman Choudhury who is the IO of the case deposed in his deposition that he had done all the routine works of investigation at various stages such as visiting of the P.O., getting done recording of statements of the victim persons u/s 164 Cr.P.C, sending the victim for medical examination etc. and ultimately after completion of investigation he submitted charge sheet against the accused person u/s 366 IPC r/w sec. 4 of POCSO Act vide Ext.5 and Exy.5(1) is his signature.

PW.5 in his cross examination stated that the victim did not state before him in her statement u/s 161 of Cr.P.C. in respect of any sexual harassment by the accused.

12. Appreciating the evidence on record it appears that PW.5 is the IO who has narrated the various stages of investigation conducted by

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him. He has proved the charge sheet as Ext.5. PW.4, Dr. Monalisa Dev is the Medical Officer who had examined the victim and opined that the victim is above 14 years and below 16 years of age and evidence of recent sexual penetration is not detected and no injury marks were detected on the body or genital part of the victim. She also opined that victim does not carry pregnancy.

- 13. PW.1 is the informant and father of the victim who although has stated at the time of occurrence his victim daughter was a student of class VI but during cross examination he has stated that prior to the incident also victim went away with the accused and he brought back her. He also stated that as parents of the accused did not accept his victim daughter as their daughter in law therefore he lodged this FIR. He has specifically stated that accused has neither induced her daughter nor kidnapped her and his daughter went to the house of the accused at her own will and therefore he has got no grievances against the accused. PW.3 Moyna Rabidas has stated in his evidence that he went to Udharbond PS wherein the accused and the victim surrendered and he came to know that they had performed marriage. During cross examination he has further stated that the matter has been amicably settled between both the parties to the effect that in due course after attaining majority the victim will be given in marriage with the accused. PW.1, the father of the victim has also stated that it was decided that his daughter would be given marriage with he accused in due time.
- 14. PW.2, the victim deposed in her evidence that about one year back she went with the accused to Udharbond Kachakanti Mandir wherein vermillion was put to her on her forehead by the accused and thereafter they surrendered before Udharbond PS and her father the PW.1 lodged the FIR. During cross examination she has stated that accused did not

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induce her nor kidnapped her nor committed any bad act with her. She also stated that the matter has been amicably settled by both the parties and she has no grievances against the accused.

- 15. Therefore, it is found that although the victim has found to be aged between 14 and 16 years but the prosecution has failed to prove the offence u/s 366 IPC and section 4 of the POCSO Act against the accused person beyond all reasonable doubt. So, I hold that the accused deserves to be acquitted.
- 16. In view of the above, accused is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

 $\mbox{ Judgment is pronounced and delivered in the open court on } \mbox{ this the $11$}^{th} \mbox{ day of September, 2019.}$ 

Dictated and corrected by

( Darak Ullah ) Special Judge, Cachar, Silchar.

Transcribed by K. Bhattacharjee,

Stenographer Gr. I

Special Judge,

Cachar, Silchar.

## IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 3 of 2018.

### **APPENDIX**

## (A) PROSECUTION WITNESSES: -

P.W. 1 — Arjun Rabidas P.W. 2 — Purnima Rabidas. P.W. 3 — Moyna Rabidas.

P.W. 4 — MO Smt.Monalisa Deb. P.W. 5 — IO Sri T.R. Choudhury

### (B) <u>DEFENCE WITNESSES</u>: - NIL

(C) PROSECUTION EXHIBITS: -

Ext. 1 — FIR.

Ext. 2 — statement.
Ext. 3 — Medical report.
Ext. 4 — sketch map
Ext. 5 — charge sheet.

- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) COURT EXHIBITS: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.