IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.8 of 2018

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

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of AssamComplainant.
-Versus-

Ajoy Karmakar......Accused persons

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr.M. Das, Ld.Legal Aid Counsel.

JUDGMENT

- 1. The prosecution case, in brief, is that the informant Smti. Kalabati Bhar lodged an FIR with the O/C Udharbond P.S. stating the facts that on 12.11.2017 at about 12 noon while the daughter of the informant was going to the market from their house, the accused person had kidnapped her.
- 2. On receipt of the FIR, a regular PS case was registered vide Udharbond P.S. Case No.233/17 U/S 366 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 accused persons U/S 366 IPC read with Section 4 of POCSO Act.

- 3. The offence U/S 4 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was committed to the Special court . In due course, upon production of the accused person and after hearing both sides formal charge U/S 366 IPC and Section 4 of POCSO Act was framed by this court against the accused person. The charges having been read over and explained the accused persons pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether the accused person on 12.11.2017 at about 12 noon kidnapped the victim, with intent that she might be compelled or knowing it to be likely that she would be compelled to marry against her will or that she would be seduced or forced to sexual intercourse, as alleged?
- (2) Whether the accused person committed penetrative sexual assault upon the victim, as alleged ?
- 5. From the prosecution side as many as 4 witnesses have been examined including the informant and the victim. As per submission of ld. P.P. the evidence of the prosecution side is closed. Statement of the accused person is recorded U/S 313 Cr.P.C. to which he denied the allegations and declined to adduce any evidence in defence.
- 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-OF

- 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.
- 8. PW.3 is the victim i.e. the principal witness in this case and she deposed in her evidence that the occurrence took place about one year ago and that time she was working as labour for construction of roads. The accused was also working in the said road construction at that time. She further deposed that one day after informing her mother she went to the house of her maternal aunt at

Kalacherra hospital, Udharbond and thereafter her mother lodged a case suspecting that she was kidnapped. Police had produced her before the court wherein her statement u/s 164 Cr.P.C. was recorded and she was also took to SMCH for her medical examination. She further deposed that about 4 / 5 months ago she got married with the accused.

In her cross examination she deposed that she had relations with the accused and accused never entered into physical relationship with her prior to their marriage. She further stated in her cross examination that after the release of the accused from the jail the village people including her mother gave her marriage with the accused. She stated in her cross examination that at the time of occurrence her age was 17 years.

- 9. PW.1 Kalaboti Bhar is the mother cum informant of this case. She deposed in her evidence that at the time of occurrence her victim daughter was working as a labour for construction of road and was going to her place of work at Ataicherra basti near to Harinaband side. Thereafter the victim did not return to her house. PW.1 further deposed that on suspicion she had lodged the FIR with the Udharbond PS and that after filing of the case police had recovered her daughter from the house of maternal aunt of the accused. PW.1 further deposed in her evidence that on being asked her daughter reported her that she went to the house of her maternal aunt at Kalacherra, Udharbond. She further deposed that at the time of occurrence the age of the victim was 18 years. In her cross examination PW.1 categorically stated that she cannot say the contents of the FIR and she also does not know as to who had written the FIR. She further stated in her cross examination that her victim daughter had informed her that she (victim) had willfully went to the house of her maternal aunt and none had taken her.
- 10. PW.2, Anjali Bhar, the sister of the victim, deposed in her evidence that about one year back from the date of her deposition the victim used to go to work for construction of road at Udharbond area and as she did not return from work her mother has lodged the FIR and thereafter the victim was recovered by the police. The defence declined to cross examine the PW.2.
- 11. PW.4, Motilal Bhar, deposed in his evidence that on the following day

of the occurrence, the informant informed him that her victim daughter was missing from her place of work of road construction at Udharbond Bazar and thereafter the informant lodged this FIR. PW.4 further deposed that after 2 / 4 days of the occurrence victim was recovered from the house of accused. He further deposed that at the time of occurrence the age of the victim was below 18 years. In his cross examination PW.4 stated that police did not record his statement and that he cannot say as to how and with whom the victim went and that he does not know as to where from the victim was recovered.

- 12. So, from the evidence of prime witness i.e. the victim PW.3 it appears that she did not at all implicate the accused person in the alleged offence of crime. Rather, she stated in her deposition that at that time she went to the house of her maternal aunt and thereafter her mother lodged this case out of suspicion and also she stated in her cross examination that accused never entered into any physical relationship with her prior to her marriage. PW-1 the informant also deposed in his evidence that she lodged the FIR on suspicion. She further deposed that at the relevant time age of the victim was 18 years. PW-4 is a reported witness. Though the PW-4 in examination in chief deposed that victim was recovered from the house of the accused but in his cross examination he categorically stated that he has no knowledge as to where from the victim was recovered.
- 13. So, from the entire evidence on record, it appears that that none of the witnesses including the principal witness the victim herself at all implicated the accused in the alleged offence of crime u/s 366 of IPC and Section 4 of POCSO Act. The victim in her cross examination stated that at the time of occurrence her age was 17 years, but in view of her own evidence in chief to the effect that at that time she went to the house of her maternal aunt , evidence of other witnesses and the charges leveled against the accused, this piece of evidence of PW.3 will not come into play to help the case of the prosecution to entangle the accused person in the alleged offence of crime.

Spl.(POCSO) Case No.8/18

- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366 of IPC and Sec. 4 of POCSO Act against accused person –Ajoy Karmakar.
- 12. In view of the above, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith.

 $\mbox{ Judgment is pronounced and delivered in the open court on } \\ \mbox{this the } 30^{th} \mbox{ day of October, 2019.}$

Dictated and corrected by

(Darak Ullah)

Special Judge,

Cachar, Silchar.

Special Judge, Cachar, Silchar.

Transcribed by K. Bhattacharjee,

Stenographer

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 8 of 2018.

APPENDIX

(A) PROSECUTION WITNESSES: P.W. 1 — Kalaboti Bhar
P.W. 2 — Anjali Bhar
PW. 3 — Babli Karmakar
PW.4 — Motilal Bhar

(B) <u>DEFENCE WITNESSES</u>: - NIL (C) <u>PROSECUTION EXHIBITS</u>: -

Ext.1 - FIR

Ext. 2 — statement of victim

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

Special Judge, Cachar, Silchar.