IN THE COURT OF THE SPECIAL JUDGE, CACHAR, SILCHAR. Special POCSO 13/2018

(U/S. 366/354 IPC and Section 8 of POCSO Act)

Present:-Shri D. Ullah, AJS., Special Judge, Cachar, Silchar.

State of AssamCo	mplainant.
-Versus-	
Sab Uddin Sheikh @ Sabuddin	Accused
Charge framed on:1	14.06.2018
P.Ws. examined on:21.08.18; 11.12.18	
Argument heard on	11.12.18
Judgment pronounced and delivered on:	12.12.18
Counsel Appeared:	
For the State : Mr. R.M. Das, Ld. P.P.	

JUDGMENT

: Mr. M. K. Barlaskar , Id. Advocate.

For the Accused

1. The brief fact of the case is that on 08.04.2018, father of the victim lodged an FIR to Rangirkhari TOP, stating that on 07.04.2018, the accused Sab Uddin Sheikh @ Sabuddin forcefully pulled Monwara Begum, the minor daughter of the informant, into his auto while she was returning from her school and took her to a deserted place where the accused tried to disrobe her and touched different parts of her body and also tried to rape the

victim. On her raising alarm, the neighbouring people assembled and caught the accused.

- 2. On receipt of the FIR, a GD Entry was made at Ranghirkhari TOP and the FIR was forwarded to OC Silchar P.S. where a case was registered vide Silchar P.S. Case No. 1074/2018, U/S 354/366 IPC, R/W Section 4 of POCSO Act. Police started investigation and during the course of investigation, accused was forwarded to judicial custody, the sketch map of the PO was drawn up. The police sent the victim to SMCH for undergoing medical examination. Subsequently, the victim was brought to the Court for recording her statement U/S 164 of Cr.P.C. The investigating officer recorded statement of the witnesses and after completion of investigation charge-sheet was submitted against accused Sab Uddin Sheikh @ Sabuddin U/S 354/366 IPC, R/W Section 4 of POCSO Act.
- 3. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 366/354 of IPC, R/W Section 8 of POCSO Act was framed against accused Sab Uddin Sheikh @ Sabuddin. The charges having been read over and explained, the accused pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION

- 4. In support of the case, the prosecution examined as many as two witnesses. The defence side examined none. As no evidence appeared in evidence, statement of the accused U/S 313 of Cr.P.C is dispensed with.
- 5. Now, in the present case the point to be decided is:
- (i) Whether the accused on 07.04.18 after school hours at village Saidpur Part-II kidnapped victim Monowara Begum, daughter of the informant with the intent that she might be compelled or knowing that it to be likely that she would be compelled to marry against her will or that she might be forced or seduced to illicit intercourse and thereby committed an

offence punishable U/S 366 of the IPC and within the cognizance of this Court.

- (ii) Whether the accused on the same date after kidnapping the victim outraged her modesty and thereby committed an offence punishable U/S 354 of the IPC and within the cognizance of this Court.
- (iii) Whether the accused on the same date after kidnapping the victim with sexual intent asked the victim to put off her clothes and committed sexual assault to her and thereby committed an offence punishable U/S 8 of POCSO Act and within the cognizance of this Court.

DECISION, DISCUSSION AND REASONS THEREOF:

- 6. Let me go through the evidence on record in order to decide as to whether prosecution is able to prove the charges against the accused beyond all reasonable doubt.
- 7. P.W. 1 Safique Uddin, the informant, has stated that he knew the accused Sahab Uddin About 4/5 months ago the occurrence took place. At the time of occurrence his daughter Monowara was a student of class IX in Dholai BNP High School. On the date of occurrence while Monowara was coming back from the school at 2 P.M. by an autorickshaw of the accused, the accused then took Monowara through bypass road. Then police informed him to go to Ranghirkari TOP. Then he went to Rangirkhari TOP and found his daughter Monowara Begum and the accused therein in the outpost. Being asked Monowara told him that the people of the Saidpur bypass locality caught the accused and handed him over to police. At the time of occurrence, the age of Monowara Begum was 14 years. Police produced Monowara in the Silchar Court wherein

Magistrate recorded her statement and police sent Monowara to SMCH for her medical examination and she was medically examined therein.

This PW 1 during cross examination has stated that the ejahar was written by one scribe as per instruction of police. Police asked him to put his signature in the ejahar and he put his signature accordingly. The FIR was not read over to him. There was a quarrel between the accused Sab Uddin and another auto driver at the time of retruning but he did not know the said auto driver. His daughter reported him that the auto driver and his men produced the present accused and his daughter to the police station. His nephew .i.e. the present accused did not do any harm to his daughter.

8. PW 2 Monowara Begum, the victim, has stated that the accused is her cousin brother. The occurrence took place about four months ago and at that time, she was a student of Class IX in BNP School, Chowrangi, Dholai. On the day of occurrence, at the time of returning from school, she saw the accused coming in an auto and as the accused is her cousin brother so she came in his auto as passenger. Near the bypass, some people had assaulted the accused and also detained his auto. They also informed police. Police came and took her and the accused along with the auto to the police station. Police had informed her father who had lodged an FIR. She was also taken to SMCH, Silchar wherein, the doctor medically examined her. She was also taken to the Court wherein her statement U/S 164 Cr.P.C. was recorded. After that the Court gave her to the zimma of her father. During cross examination, the victim has stated that she usually used to go in the auto-rickshaw of the accused as he is her cousin brother. On the date of occurrence, some people had made hue and cry and assaulted the accused. The accused has not committed any illegalities upon her. She has no grievances against the accused.

- 9. From the above evidence on record, it is found that the victim, the PW 2 and her father, the informant .i.e. the PW 1, have not supported the prosecution story and also not implicated the accused person in respect of the charged offence.
- 10. So from the above discussions of the evidence on record it is found that the prosecution has failed to prove the offences U/S 366/354 IPC R/W Section 8 of POCSO Act against the accused beyond all reasonable doubt. Therefore, the accused Sab Uddin Sheikh @ Sab Uddin stands acquitted of the charge and he is set at liberty forthwith.
- 11. Judgment is delivered in the open Court on this 12th Day of December 2018.

Dictated & corrected by me

(D. Ullah)
Special Judge,

Special Judge, Cachar, Silchar.

Special Judge, Cachar, Silchar

Transcribed by Dipankar Paul, Stenographer Gr. III

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR Special POCSO . 13 of 2018.

ANNEXURE

(A) PROSECUTION WITNESSES: -

P.W. 1 – Safique Uddin P.W. 2 – Monowara Begum

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

Exhibit 1 – Ejahar

Exhibit 2 – Statement of the victim.

- (D) DEFENCE EXHIBITS:- NIL
- (F) COURT EXHIBITS: NIL
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

(Shri D. Ullah), Special Judge, Cachar, Silchar.