IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl(POCSO) No. 1 of 2019.

(U/S: 366(A/376 I.P.C. R/W Sec.4 of POCSO Act & Section 323/506/34 I.P.C.)

State

-Versus-

(1)Golap Hussain

S/O Julhas Ali

(2)Julhas Ali

S/O Late Abdul Aziz

(3) Mustt. Murshida Begum

W/O Md. Julhas Ali

(4) Mubarak Ali

S/O Late Abdul Jalil

(5)Zakir Hussain

S/O Md. Julhas Ali

All R/O Village Pachim Bahabari P.S- Kharupetia, Dist-Darrang(Assam)

-- Accused.

PRESENT: Sri P.K.Bora, A.J.S., Sessions Judge. Darrang, Mangaldai.

APPERANCE:

Learned advocate for the State : Mr. Premeswar Sarma

AND

Learned advocates for the the accused: Mr. Salim Ahmed.

Evidence recorded on :27/02/2019

Argument heard on :03/06/2019

Judgment delivered on:03/06/2019

JUDGMENT:

- 1. The case of the prosecution in brief is that on 18/03/2018 one Rukia Khatun lodged an FIR before O/C, Kharupetia Police Station stating that on 10/03/2018 at about 1 p.m. her minor daughter (real name is withheld hereinafter referred to as victim) was taken forcefully by the accused Golap Hussain and raped her in his house. Thereafter, the other accused persons as indicated in the FIR caused hurt voluntarily and took her to the house of the informant Rukia Khatun and left her there. As an attempt was made for a village ' bichar", the lodging of FIR was delayed.
- 2. On the basis of the said FIR a case was registered against the accused persons U/S 363/343/376/323/307/34 I.P.C. read with Section 8 of POCSO Act. During the period of investigation Police got the statement of the victim girl recorded in the court and finally submitted charge sheet against the accused Golap Hussain U/S 366(A)/376 I.P.C. and Section 4 of the POCSO Act and against the other accused persons U/S 323/506/34 I.P.C.
- 3. On their appearance before this Court the written charge U/S 366(A) I.P.C. and 376 IPC read with Section Section 4 of POCSO Act explained and read over to the accused Golap Hussain to which the accused pleaded not guilty and the offences U/S 323/506/34 I.P.C. explained and read over to the other accused persons to which the they pleaded not guilty.

4. **Points for determination**:

(i) Whether on 10/03/2018 at about 1 p.m. the victim was kidnapped by the accused Golap Hussain and thereafter, she was raped by the said accused in his house and thereby committed an offence U/S 376 IPC and also U/S 4 of POCSO Act?

- (ii) Whether the accused persons on the same date, time and place caused hurt voluntarily to the victim in furtherance of common intention of all the accused persons?
- (iii) Whether on the same date, time and place the accused persons intimidated the victim with injury in furtherance of common intention of them?

REASONS AND DECISIONS THEREON

- 5. In the course of trial, the prosecution examined informant Rukia Khatun as PW1 and her daughter victim as PW2.
- 6. In her evidence PW1 has stated that on the day of the incident victim was taken secretly by the accused Golap Hussain in his motor cycle to his grandfather's house. Thereafter, her husband and the father of Golap brought both of them to the house of Golap. Then both Golap and victim left for their respective houses. At first it was told to her that there would be a marriage between Golap Hussain and victim. But later she got a scent that there would not be such a marriage, so she filed a case. She proved her FIR as Ext.1 and her signature as Ext.1(1).
- 7. In cross-examination, she made it specific that none of Golap's house had committed any offence.
- 8. PW2 victim has stated in her evidence that both victim and Golap loved each other and on the day of the incident both of them left for Golap's grandfather's house. Thereafter, their parents searched out them and they proceeded to their respective houses. In this regard her mother lodged a case. During investigation, she was produced before a Court and Court recorded her statement. Ext.2 is her statement and Ext.2(1) and Ext.2(2) are her signatures. She states that she deposed a false story in the court, because he was with such a fear that there would not be a marriage between Golap and her if she did not speak that Golap had committed rape on her.

- 9. In her statement recorded U/S 164 Cr.P.C. she recorded her age as 17 years. In the FIR also her age was shown as 17 years 1(one) month 13 days on 18/03/2018. She was a student of class X(ten) at that time. Therefore, it can safely be presumed that at the time of the incident and also at the time of the recording her statement by the Court, she had sufficient maturity and had a capacity to take decision about her future. She was at the age of her use of own discretion. She makes her earlier statement a total false version of her. Therefore, I do not feel necessity to proceed further with this case.
- 10. It has not been produced from the side of the prosecution that at the time of the incident victim was a minor. The I.O. also did not conduct the medical examination of the victim girl to ascertain her age. Therefore, the victim is considered as major at the time of the incident. She is a consenting party of the alleged fact of kidnapping by the accused in the FIR. Thus, there is no case against the accused U/S 366(A)/376 I.P.C. In her clear evidence PW1 has stated that the other accused persons did not commit any offence to the victim. Therefore, I am of the view that there is no evidence to hold the accused persons guilty under the offences stated earlier.
- 11. Considering the above, the accused persons namely Golap Hussain, Julhas Ali, Murshida Begum, Mubarak Ali and Zakir Hussain are acquitted and set at liberty forthwith.
- 12. The bail bonds of the accused shall remain in force for next six months U/S 437(A) Cr.P.C.
- 13. Given under my hand and seal of this Court this 3rd day of June,2019.

(P.K.Bora) Sessions Judge, Darrang,Mangaldai. Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

APPENDIX

- (A) Prosecution witnesses:
- (i)PW1 Rukia Khatun (ii)PW2 victim.
- (B)Defense witness: Nil
- (C)Exhibits:
- (i)Ext.1 FIR
- (ii)Ext.2 statement of victim.

Sessions Judge, Darrang,Mangaldai.