

Special (POCSO)Case No. 02/2019.

U/S - 366(A) of the IPC read with Sec. 4 of POCSO Act

STATE OF ASSAM

- Versus -

Ali Hussain Laskar

...... Accused.

PRESENT: Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri N.A. Mazumder, Ld. Advocate.

Dates of recording evidence

:- 26.04.2019 & 07.02.2020.

Date of recording statement u/s 313, CrPC

:- 19.02.2020.

Date of Argument

:- 19.02.2020.

Date of Judgment

:- 19.02.2020.

JUDGMENT

1. The prosecution case, in brief, is that on 27.04.2018 the informant Jia Uddin Laskar lodged an ejahar with the O/c, Hailakandi Police Station alleging that on 26.04.2018 at about 8 PM his minor daughter i.e the victim went to out of the house to attend nature's call but she did not return back and as such, the informant made search for her but could not trace her out but subsequently, he came to know that the accused Ali Hussain Laskar kidnapped the victim.

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- 2. On receipt of the ejahar, the same was registered as Hailakandi Police Station Case No. 298/2018 under Sec. 366 of the IPC and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Ali Hussain Laskar under Sec. 366, IPC.
- **4.** On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Ali Hussain Laskar under Sec. 366(A) of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- 6. In the instant case, the prosecution has examined 3 Nos. of PWs including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations and has stated that the case has been filed against him falsely. The defence did not adduce any evidence.
- **7.** Heard argument of both sides. Perused the record.

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8. POINTS FOR DETERMINATION:

(i) Whether on 26.04.2018 at about 8 PM the accused person induced the victim to go with him with intent that she may be or knowing that she would be forced or seduced to illicit intercourse and thereby the accused has committed the offence punishable under Sec. 366(A),IPC?

(ii) Whether the accused committed penetrative sexual assault on the victim and thereby the accused has committed the offence punishable under Sec. 4 of the POCSO Act?

DISCUSSION, REASONS AND DECISION THEREOF:

9. The PW. 1, the victim has deposed that about one year back one day at about 7/8 PM while she went out of her house to answer nature's call, the accused alongwith one unknown person appeared there and by gagging her mouth, took her inside a jungle and while they were talking to each other at a little distance, she ran to a nearby house and subsequently, police recovered her from the house. During investigation, police got her medically examined and also got her statement recorded by Magistrate vide Ext. 1.

In cross examination, the victim has stated that the persons who took her had covered their face with cloths and it was dark night and as such, she could not recognize them. It is further stated by the victim that subsequently, she learnt that the accused person was not involved in the occurrence.

The PW. 2, Swapna Begum, the mother of the victim, has stated that on the relevant night her daughter i.e. the victim went out of the house to attend nature's call but she did not return back and accordingly, they made search for her but could not find her out and accordingly, her husband lodged the case.

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The witness has stated in her cross examination that her daughter i.e. the victim told her that she (the victim) went to her aunt's house and the accused was not involved in any occurrence.

- The PW.3, the informant Zia Uddin Laskar has deposed that in the relevant night at about 6.30 PM his daughter i.e. the victim went out of the house to attend nature's call but she did not return back and accordingly, he made search for his daughter and came to know from the people that the accused kidnapped his daughter and accordingly, he lodged the case vide Ext. 2. It is further deposed by the informant that after 3 days, his daughter returned home and on being asked, she told him that she went to the house of her maternal aunt and then, he realized that the information which he received about the involvement of the accused was false.
- herself and her evidence bears much significance to prove the alleged commission of the offence. Though the victim in her evidence in chief has implicated the accused person but in her cross examination, she has unequivocally divulged that the persons who took her had covered their face with cloths and it was dark night and as such, she could not recognize them. Supporting the evidence of the victim, the informant i.e. the father of the victim and her mother, the PW. 2 in their evidence have stated that the accused person was not involved in the occurrence.
- 13. When the victim as well as her parents has not implicated the accused person in their evidence with the commission of the alleged crime, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.
- **14.** Accordingly, the accused person Ali Hussain Laskar is acquitted of the offence under Sec. 366(A) IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.
- **15.** The bail bond of the accused person stands discharged.

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The Special (POCSO) case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 19th day of February, 2020.

Special Judge, Hailakandi.

Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.

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Appendix:-

Oral evidences :-

PW. 1, the Victim.

PW. 2, Swapna Begum Laskar &

PW. 3, Zia Uddin Laskar.

Documentary evidences:

Ext. 1- Statement of the victim

Ext. 2- Ejahar.

Defence did not adduce any evidence.

Special Judge, Hailakandi.