IN THE COURT OF SPECIAL JUDGE (POCSO), SONITPUR AT TEZPUR

<u>SPL. POCSO CASE NO.</u> :- <u>06 of 2019</u>

(Under Section 366 A of IPC, R/W Sec. 4 of

POCSO Act)

Present :- R. Baruah

Special Judge (POCSO)

Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- Md. Safiqul Islam,

S/o Late Samsuddin R/o Vill. Satai Sapori PO & PS – Tezpur Dist- Sonitpur, Assam

Date of framing charge :- 16-05-2019

Date of Recording Evidence :- 24-04-2018 & 13.06.2019

Date of examination of accused u/s: 09-07-2019

313 of Cr.P.C.

Date of Argument :- 09-07-2019

Date of Judgment :- **09-07-2019**

Counsel of the Prosecution :- A. Baruah & J. Baruah,

Addl. Public Prosecutors,

Tezpur.

Counsel for Accused :- B. Borthakur, Advocate.

JUDGMENT

- 1. In this case above accused is put for trial for the allegation of charge Under Section 366 A of IPC, R/W Sec. 4 of POCSO Act.
- 2. The prosecution case in brief is that on 27.06.2019 informant Abdul Jabbar lodged FIR before the In-Charge Borghat Police Out Post stating that on 26.06.2017 his eldest son-in-law Safiqul Islam at around 3:30 PM took away his third daughter "X" (The name of the victim is not mentioned in the judgment for confidentiality) for a stroll. Thereafter there is no news about them but it is come

to the knowledge that Safiqul took away the girl after luring her. Age of the girl is 16 and $\frac{1}{2}$ years.

- 3. On receipt of the FIR, the I/C Borghat Police O.P. made a GD Entry, forwarded the FIR to the Tezpur P.S. and he started investigation. OC, Tezpur PS registered the same as Tezpur P.S case no. 12/2017 under sections 366 A of IPC and endorsed the same for investigation.
- 4. Police after completion of investigation, submitted charge sheet against the accused under section 366 A of IPC and laid the same before the learned CJM, Sonitpur, Tezpur for trial. Accordingly, the learned CJM, Sonitpur, Tezpur transferred the case to the Court of learned Addl. CJM, Tezpur for trial. Since the offence is triable by the court of Sessions, the same was committed to the Court of Sessions after furnishing the relevant copies under the provisions of Cr.P.C. During trial it has come to the notice that offence is to be tried by the Special Court as the offence appears to be under POCSO Act. Accordingly the case is transferred to this court.
- 5. On appearance of the accused and after hearing the learned advocate for both the sides, charge Under Section 366 A of IPC, R/W Sec. 4 of POCSO Act framed against the accused. The above offenses read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 6. To substantiate the case, prosecution has examined as many as 2 (two) nos. of witnesses. The prosecution witnesses namely 1. Md. Abdul Jabbar (PW2) and 2. "X" (PW3) (victim). After hearing both the sides the evidences of the witnesses recorded previously is also taken into consideration.
- 7. Accused is examined under section 313 Cr.P.C. The defence plea is of total denial and defence has declined to adduce defence evidence.
- 8. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.
- 9. The points for decision in this case are
 - (1) Whether the accused on 26.06.2017 at around 3:30 PM at No. 1 Satai Sapori under Tezpur P.S. induced "X", a minor girl of 17 years to go from the village or to do any act with intent that the said "X" may be or knowing it is likely that the said "X"

may forced to or seduced to illicit intercourse with the accused?

(2) Whether on the same date, time and place the accused committed penetrative sexual assault to "X" aged about 17 years minor airl?

Discussion, Decisions and reasons for decision:

- 10. Before appreciating the evidence, I am of the opinion that the evidence so adduced by the prosecution witnesses needs to be reflected.
- 11. PW2 is the informant. He said that his daughter "X" fled with his son-in-law. On that day he could not find his daughter "X" and his elder daughter informed that "X" fled with the accused and hence he lodged the FIR. His elder daughter's residence is about $1-1\frac{1}{2}$ kilometer from his house. The age of his daughter was $16-16\frac{1}{2}$ years.

During cross the PW2 said that accused is his son-in-law (husband of his niece). During Eid his daughter (victim) went missing and at that time he was not in the house. The villagers asked him to lodge FIR against the accused but he do not know what is written in the FIR. He has got four children. The victim is his second child and her age will be about 20 years. He do not know the exact age of his daughter. He put the age of his daughter in the FIR on guess. Later on he came to know that victim went for a ride with the accused. He has got no objection if the accused is acquitted.

12. PW3 is the victim. She in her examination in chief said that the incident occurred on the occasion of Eid. She had gone to a nearby shop and then accused asked her to go with him for a ride on his bike but she refused. On insistence by accused that he will return, she went with the accused. Accused took her to Balipara to the house of Halima. They stayed in the house of Halima and there the accused raped her. The accused threatened her with dire consequences if the matter is disclosed at home. In the mean time her sister (wife of accused) repeatedly asked accused to return and on the next day evening they return to his house and from there police recovered her and took her to the police station. On the next day she was produced before the court for recording her statement. PW3 exhibited the statement u/s 164 of Cr.P.C. as

Exhibit 2.

In cross examination the PW3 said that accused is her brother-in-law (husband of cousin sister). Incident took place about 2 years back during Eid she went with accused in his bike for a ride to the house of Halima at Balipara. They stayed in the house of Halima after taking meal and they were allowed to sleep separately. On the next day they returned from Balipara and then villagers apprehended both and took them to police station. She came to know that her father had lodged FIR with the police apprehending that she has been kidnapped. PW3 said that she on her own will went with the accused for a ride. Villagers asked her to give statement as taught by them and accordingly she gave statement before police, magistrate and court. No physical relation took place between her and the accused. She did not state before police that they stayed in the house of Halima nor stated that incident took place in the house of Halima. She never stated her age to be 17 years.

In the present case the PW3 (victim) is the material witness. The informant (PW2) has only lodged the FIR. The PW2 stated that he is not aware what happened to the PW3. PW2 only lodged the FIR informing the missing of his daughter. In the FIR the PW2 mentioned that his daughter was lured by the accused and taken away but the PW3 stated in cross examination that she on her own went with the accused. The PW3 mentioned that during day time on her way to a shop she was asked by the accused to come with him for a ride. Riding a motor cycle during day time and going to another place in the motor cycle without any objection cannot be termed as kidnapping.

The PW3 though in examination in chief said that the accused has raped her, in cross examination she made a u-turn and stated that no physical relation took place between her and the accused. Moreover the PW3 mentioned that her age is 20 years (on 13.06.2019). No documents regarding the age of victim is exhibited. Considering the statement of victim, on the day of occurrence her age at the time of occurrence was 18 years.

- 14. In view of the above, it is held that the prosecution failed to prove the charge against the accused Under Section 366 A of IPC, R/W Sec. 4 of POCSO Act. The accused is acquitted and set at liberty forthwith.
- 15. The bail bonds shall remain in force for six months from today.

- 16. Free copy of judgment be furnished to the accused.
- 17. Copy of judgment be forwarded to Ld. District Magistrate, Sonitpur in terms with the provisions of law.

Given under my Hand and Seal of this Court on this the $\mathbf{9^{th}}$ day of **July, 2019**.

(R. Baruah) Special Judge (POCSO) Sonitpur, Tezpur

Dictated and corrected by me.

(R. Baruah) Special Judge (POCSO) Sonitpur, Tezpur

Dictation taken by me:

Sri Jitumoni Boro, Computer Typist.