IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.55 of 2019

(U/S 366 / 493IPC and Sec. 4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of AssamComplainant.

-Versus-

Binoy Das	Accused.
Charge framed on:	18.12.19
P.Ws. examined on:	21.1.20
Argument heard on:	21.1.20.
Judgment pronounced and delivered on:	21.1.20.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr.G.A.Mazumder, Id. Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that the informant lodged an FIR with the I/C of Katigorah PS stating the facts that on 19.08.19 at about 8-30 a.m. while was going to Siddeswar H.S. school from her house, on the way accused had kidnapped her. It is also alleged that the accused in collusion with co accused did so and subsequently when the matter was inquired to the co accused he avoided the on this or that plea.
- 2. On receipt of the FIR, O/c Katigorah PS registered a regular PS case vide Silchar Katigorah P.S. Case No.537/19 U/S 366 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 investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet against accused Binoy Das only U/S 366/493 IPC r/w section 4 of POCSO Act.

- 3. The offence of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial after filing of the charge sheet. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 366/493 of 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 pleaded not guilty and claimed to be tried.
- 3. Now, in the present case the points to be decided are :-
- (i) Whether on 19.08.19 at about 8-30 a.m. the accused persons kidnapped the victim with the 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?
- (ii) Whether the accused by practicing deceit caused the victim who was not lawfully married to him to believe that she was lawfully married to him and in that belief cohabited or had sexual intercourse with her, as alleged?
- (iii) Whether the accused person committed penetrative sexual assault upon the victim, as alleged ?
- 6. Prosecution side examined as many as 2 witnesses i.e., the victim and the informant as PW.1 and PW.2 respectively. On the submission of the Id. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 7. 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

- 8. 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 points for determination.
- 9. PW.1 is the victim who is the prime witness of this case deposed in her evidence that the occurrence took place about 3 / 4 months earlier from the date of her deposition in the morning and on that day as her mother scolded her she went to the house of her maternal aunt at Anapurnaghat and stayed there. She further deposed that police recovered her and the accused and brought to Katigorah PS and then PW.1 was taken to her and then she came to know that her uncle lodged a case and thereafter her medical examination was done and her statement u/s 164 Cr.P.C was recorded in the court. Ext.1 is the said statement.

PW.1 in his cross examination stated that she went to the house of her maternal aunt out of her own accord. She further stated that at the time of her recovery the accused was not with her or police and police brought the accused from other place. She further stated that out of misunderstanding of facts her uncle lodged this case and she has got no grievances against the accused.

10. PW.2, Goutam Paul, who is the informant of this case and uncle of the victim deposed in his evidence that on the date of occurrence as the victim did not return from school as such he lodged this FIR against the accused and another. Police recovered the victim from Annapurnaghat.

In his cross examination PW.2 deposed that out of misunderstanding of fact he lodged the FIR against the accused and PW.2 has got no grievances against the accused.

11. So, from the evidence of prime witness i.e. the victim PW.1 it appears that at the relevant time she went to her maternal aunt's house as her mother scolded her and her uncle lodged this FIR. The informant PW.2 also deposed that he lodged the FIR against the accused as she did not return from school. So, from

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the evidence in its entirety of the principal witnesses- the victim and the informant it reveals they did not at all implicate the accused in the alleged offence of crime. Rather both the witnesses stated in their cross examination that out of misunderstanding of facts this FIR was lodged and that they have got no grievances against the accused. PW.1 also stated in her cross examination that at the time of her recovery the accused was not with her and the police brought the accused from other place. In view of the above for non implication of the accused by the prime witnesses i.e. the victim and the informant in their evidence, the accused deserves to be acquitted.

- 12. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366/493 of IPC and Sec. 4 of POCSO Act against accused.
- 13. In the result, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 21st day of January, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge,

Cachar, Silchar. Cachar, Silchar.

Transcribed by K. Bhattacharjee,

Stenographer Gr. I

Special Judge,

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 55 of 2019.

APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 – victim

P.W. 2 — Goutam Paul.

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

Ext. 1 – statement of victim.

Ext.2 - FIR

(E) <u>DEFENCE EXHIBITS</u>: - NIL. (F) <u>COURT EXHIBITS</u>: - NIL.

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.