## Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge, Cachar, Silchar.

# Spl(POCSO) Case No. 7 / 2017 u/s 366 IPC r/w sec.4 of the POCSO Act The State of Assam

-Versus-

#### Shambhu Goala @ Kutu

..... accused person

Dates of evidence : 14.9.17; 21.4.18; 28.5.19; 20.6.19

Date of argument: 16.11.19

Date of judgment : 27.11.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. S. Chakraborty. Ld. advocate

### J U D G M E N T

1. The brief facts of the prosecution case is that the informant Rathindra Kumar Dey lodged an ejahar dated 10.4.16 stating that on 9.4.16 at about 3 pm the daughter of the informant i.e. the victim went out from the house but she did not return. It is also stated that as per mobile message of his daughter , the informant suspected that subscriber of the mobile No.7576919835 had kidnapped his minor daughter and hence this case.

- 2. Accordingly, on receipt of the ejehar, police registered a case being Silchar P.S Case No.977/16 u/s 366(A)/34 of the IPC. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 366(A) of the IPC r/w sec.4 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court . Thereafter, on 23.3.17 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Shambhu Goala @ Kutu has appeared before this court and on 7.8.19 after hearing the prosecution and the defence counsel, this court was pleased to frame charges u/s 366 of the IPC r/w sec. 4 of the POCSO Act against the accused person and its particular was read over and explained to him to which the accused pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced , during which the prosecution examined as many as, 7(seven) witnesses , which includes the informant , the victim, the Medical Officer and the Investigating Officer of the case. After closure of the prosecution evidence, the statement of the accused person u/s 313 of the Cr.P.C is recorded and his plea is of total denial and he declined to adduce any evidence in his support.
- 5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

#### 6. **Point for determination:-**

(i)Whether on or about the 9.4.16 at about 3 pm at Ashram Road Giridhari Lane under Silchar P.S the accused person kidnapped the victim, i.e. the minor daughter of the informant with intent that she would be compelled to marry her against her will or in order that she would be forced or seduced with illicit intercourse or knowing it likely that she would be forced or seduced to illicit intercourse, as alleged?

(ii)Whether on the same date, time and place the accused person committed penetrative sexual assault upon the victim, as alleged?

#### **Discussion**, Decision and Reasons Thereof:-

- 7. In this case the prosecution side examined as many as 7(seven) witnesses to prove the case.
- 8. The P.W.1 Dr. Monalisa Deb and she is an official witness and she proved the medical report as the Ext.1.

The P.W.2 is Goutum Dey is a reported witness and his evidence has failed to implicate the accused with the alleged offence . The P.W.3 is Ratindra Kumar Dey, the informant of the case and he testified that on 9.4.16 at about 2.30/3 pm his daughter was found missing from his house and accordingly he made searches but could not find her out and accordingly he informed the matter to P.W.1. The P.W.3 further stated that on the following morning he lodged an FIR, which is brought on record as the Ext.2. The P.W.3 also stated that at the time of occurrence the victime was a student of class -IX of Ramanuj Vidyamandir and after recovery he could learnt from the victim that she was taken by the accused . He also admitted that at the time of occurrence the age of the victim was 15 years and her date of of birth is 23.8,2000.

12. Appreciating the materials on record, it is found that though the informant P.W.1 alleged that the accused had kidnapped his daughter but during his deposiiton before the court had failed to support the said version. The victim P.W.3 has also failed to implicate the accused person with the alleged offence. She has stated that the accused married her and taken her to his house and she lives there as his wife and the said fact is supported by her mother i.e. the P.W.2, the wife of the informant. On the other hand, the P.W.4 & 5 in their deposition admitted that there was love affairs between the accused and the victim for which the victim went with the accused of her own accord. Though, the P.W.1 & the P.W.2 have stated in their evidence that at the relevant time of occurrence the victim was a student of Class X. From the evidence on record, it is seen that although the father of the victim i.e. the P.W.1 had stated that the victim was 16 years of age but no any birth certificate or school certificate are placed by the prosecution side in

respect of the age of the victim. The victim herself has stated that her age is 19 years and the alleged occurrence took place on 5.3.19.

- 13. In view of the above position, I am of the opinion that the prosecution side failed to prove that the victim is below 18 years of age at the time of occurrence. That apart, neither the victim nor any other witnesses have implicated the accused person in respect of the offence charged against the accused person i.e. the offence u/s 366/376 of the IPC r/w sec. 4 of the POCSO Act.
- 14. It is the bounded duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt.
- 15. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

#### ORDER

16. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 366/376 of the IPC r/w sec.4 of the POCSO Act against the accused person present today beyond reasonable doubt. As a result the accused person namely, Jia Uddin is acquitted and set at liberty.

Set my hand and seal of this case on the 21st day of November, 2019.

(Mr.D.Ullah),

Sessions Judge, Cachar, Silchar.

Dictated & corrected by me;

Sessions Judge, Cachar, Silchar.

#### **APPENDIX**

#### **A.Prosecution Witnesses:-**

P.W.1-Saiful Ali

P.W.2-Alkuma Bibi

P.W.3-Victim

P.W.4-Jashim Uddin

P.W.5-Saidul Hussain

### **B.Prosecution Exhibits:-**

Ext.1-FIR

Ext.2-Statement of the victim.

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

( Mr.D.Ullah),

Sessions Judge, Cachar, Silchar.