IN THE COURT OF THE SESSIONS JUDGE, CACHAR, SILCHAR.

Special (POCSO) Case No.7 of 2014.

Under Section 366/376 I.P.C. u/s 4 of the POCSO Act Act, 2012.

Present :- Shri S.K. Sharma,
Sessions Judge,
Cachar, Silchar.

State of Assam

- Versus -

Amir Hussain Laskar

Appearance:-

For the prosecution :- Sri S. Dutta, learned P.P.

For the defence :- Sri A.Biswas, ld. State Defence Counsel.

Dates of evidence :- 9/09/14

Argument heard on :- 9/09/14

Judgment delivered on :- 09.09.2014.

JUDGEMENT

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- 1. The prosecution case is that on 31/03/14 the accused person kidnapped the daughter of the informant aged about 17 years from the house of the complainant and thereafter had committed rape/penetrative sexual assault upon her. The father of the prosecutrix lodged the FIR vide Ext.1 on 4/4/14 whereupon a police case was registered and investigation commenced.
- 2. In course of investigation, I.O. recorded the statement of the witnesses and sent the victim to SMCH for medical examination and also got the statement of the prosecutrix recorded by Magistrate u/s.164 Cr.P.C. On completion of investigation, the I.O. submitted charge-sheet against the accused person.
- 3. Upon committal, court framed charges u/s.366/376 I.P.C. u/s 4 of the Protection of Children from Sexual Offences Act,2012 against the accused person. The said charges were read over and explained to him. The accused person pleaded not guilty and claimed to be tried.

- 4. The prosecution examined 3(three) witnesses in order to establish its case. On perusal of the evidence recorded so far I did not consider it necessary to summon the I.O. and other two witnesses. Hence the prosecution evidence was closed. Statement and Defence of the accused is recorded. Defence declined to adduce any evidence.
- 5. Heard Mr. S. Dutta, learned P.P. for the prosecution and Mr. A.Biswas, Ld. State Defence Counsel.

6. Point for determination :

- (1) Whether on 31.03.2014, at village Kachdaram Part IV under Kachudaram, the accused ou kidnapped or abducted, a minor girl with intent that she may be forced or seduced to illicit intercourse?
- (2) Whether on the same night and same village, the accused committed rape/penetrative sexual assault on prosecutrix, a minor girl?

7. **Point No.1**

- (i) In the present case, the father of the prosecutrix who was examined as P.W.1 deposed that at the time of occurrence, the age of his daughter was 19 years and the prosecutrix herself deposed that it was 17 years. As per the medical report the age of the prosecutrix was above 16 years and below 18 years. The prosecutrix in her own statements recorded before the Magistrate u/s 164 Cr.P.C. deposed her age to be 19 years which she admitted during her cross examination. Therefore some doubts have been successfully created by the defence regarding the age of the prosecutrix, the benefit of which must go to the accused. Therefore, it is not fully established that the prosecutrix was a minor at the time of occurrence. Hence the offence of kidnapping cannot be committed against her.
- (ii) It is now to be looked into whether accused forcibly or by applying deceitful means abducted the prosecutrix ?
- (iii) P.W.2 deposed that at the time of occurrence she was a student of college at Amraghat and after returning from college she had gone to the house of her aunt Kalabi. While she was returning from there through a paddy field and reached near the road, suddenly a Nano car came and from that Nano Car accused Amir Hussain emerged and dragged her inside the Nano car and gagged her mouth and took her to Kachudaram to the house of one of his relatives. From there he brought her to Chotobauri to the house of his Pisi(paternal aunt). Accused also assaulted her because she did not obey him. The prosecutrix further deposed

that after four days accused along with his brother brought her to the Kachudaram P.S. .Thereafter, her father and one relative along with a female constable brought her to Silchar court where she gave her statements before the Magistrate.She further deposed that she could not raise any hulla at the relevant time because the accused gagged her mouth .During cross examination she admitted that she did not state before the Magistrate or police that when she reached near the road, suddenly a nano car came and from that Nano car accused Amir Hussain came down and dragged her inside the Nano and he gagged her mouth and brought her to Kachudaram to the house of one of his relation .

- (iv) Therefore, what she deposed before the court regarding role of the accused in abducting her is for the first time before the court and has contradicted what she had deposed before the Magistrate and before the police. Although she stated in her examination in chief that she had given her statements u/s 164 Cr.P.C. before the Magistrate as per the dictation and instruction of the accused the defence during cross examination successfully brought it out that her statement was recorded on 7/4/14 whereas accused person was arrested on 5/5/14 and sent to jail. Therefore the accused was not in a position to influence the prosecutrix to make such statements. With reference to the Ext.2, statement, the defence brought out during cross examination that the prosecutrix had stated before the Magistrate that she had love affaris with the accused and wanted to go to his house which statement is admitted by the prosecutrix in her cross examination.
- (v) PW.1 father of the prosecutrix deposed that when the prosecutrix went missing, they made search for her and after four days as she could be traced out they reported the matter to the P.S. and thereafter the accused along with his daughter surrendered before the police which also shows that the prosecutrix voluntarily went with the accused ,being a person of mature age and capable of distinguishing between right and wrong. Although PW.1 stated that on being asked , his daughter stated that accused forcibly kidnapped and took her to Kachudaram, the aforesaid version is not believable in view of what has been already discussed regarding the evidence of prosecutrix herself. Even in cross examination , he admitted that he did not state in that FIR and also before the police wherefrom he heard that accused had kidnapped his daughter.
- (vi) PW.3 Mojrun Nessa @ Kalabi who is sister of the informant merely deposed that on the day of occurrence the prosecutrix came to her house and after taking water left her house and in the evening, she heard from the mouth of a

woman that Jhony was missing and the woman told her that the accused had taken her away.P.W.3 did not mention the name of the woman from whom she heard so.During cross examination she admitted that she did not state before police that she heard from the mouth of a woman about the accused taking away the prosecutrix.

(vii) Furthermore, while deposing that the accused person came in a Nano car and forcibly dragged her and took her inside P.W.2 did not mention whether there was anybody else present in the car to aid and assist the accused or whether the accused person had tied her up inside the car. Therefore it is quite improbable that the accused person who is a person of slight built would be capable of accomplishing the aforesaid feat on his own. It is also too much of a coincidence that while the prosecutrix was returning from the house of her aunt through a paddy field, the accused person also suddenly happened to arrive there with the intention of kidnapping her.

(viii) In view of what has been discussed above I am not inclined to rely upon the version of prosecutrix as I find it to be unworthy of credit. The Point No.1 is answered in negative.

8. Point No.2

With regard to the point No.2, there is no iota of evidence regading commission of rape or sexual assault, this point is also answered accordingly.

9. In view of what has been discussed above, I hold that the prosecution has failed to establish its case beyond reasonable doubt. Consequently, the accused person is acquitted of the offence u/s.366/376 I.P.C.and u/s 4 of the Protection of Children from Sexual Offences Act,2012 .He be set at liberty forthwith.

Given under my hand and seal of the Court on this the 9^{th} day of September 2014.

Sessions Judge, Cachar, Silchar.

Dictated & corrected by me.

Sessions Judge,

Cachar, Silchar.

Dictation taken & transcribed by K.Bhattacharjee, Stenographer.