IN THE COURT OF SPECIAL JUDGE :: :: ::::::: CACHAR, SILCHAR Spl.(POCSO) Case No.49 of 2019

(U/S 376 IPC and section 6 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge, Cachar, Silchar.

State of AssamComplainant.

-Versus-

Rajib Hussain	Accused.
Charge framed on:	2.1.20
P.Ws. examined on:	19.2.20
Argument heard on:	19.2.20.
Judgment pronounced and delivered on:	19.2.20.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr.R.Ahmed, Id. Advocate.

JUDGMENT

1. The prosecution case, in brief, is that the informant lodged an FIR with the I/C of Kalain PP stating the facts that on 8.11.17 the informant came to know from the teacher of the school of the minor victim daughter (name withheld)of the informant that accused at about 12-30 p.m. had taken away the victim from her school falsely stating that the mother of the victim was seriously ill and thereafter accused had kept concealed the victim.

- 2. On receipt of the FIR, I/c Kalain P.P. forwarded the same to Katigorah PS wherein a regular PS case vide Katigorah P.S. Case No.655 of 2017 U/S 420/366A IPC was registered. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C and victim was medically examined. 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 Rajib Hussain U/S 366A/376 IPC r/w section 4,6,8 of POCSO Act.
- 3. The offence u/s 4,6,8 of POCSO Act 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 376 of IPC and Section 6 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.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether on 8.11.17 at about 12-30 p.m. the accused person committed rape on the victim as alleged?
- (ii) Whether the accused committed penetrative aggravated sexual assault on the victim, as alleged ?
- 5. 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.
- 6. 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

- 7. 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.
- 8. PW.1 is the victim and she deposed in her evidence that on the day of occurrence, she went to the house of her maternal aunt at Natanpur without informing her parents and her father out of misunderstanding of facts, lodged the FIR against the accused. She added that police recovered her from the house of her maternal aunt and thereafter she was taken to SMCH, Silchar wherein her medical examination was done and she was also brought to the Court where her statement U/S 164 Cr.P.C. was recorded. She also deposed that she was handed over to her father as per order of the Court and she was also kept in Ujala Home for one day. She further deposed that at the time of occurrence, she was a student of class VII.

In her cross examination she stated that nobody had kidnapped her and nobody did any bad acts with her.

9. PW.2, Abdul Sukkur, who is the informant of this case deposed that the occurrence took place about two/three years ago and on that day his victim daughter went to school and has not returned. He further deposed that as his daughter went to the house of his sister in law at Natanpur without informing him and as such on suspicion he lodged the FIR against the accused. He also deposed that police had recovered his daughter and she was kept in Ujala Home and thereafter brought to the Court and her statement was recorded and thereafter she was given zimma to PW.2. He

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also deposed that at the time of occurrence the age of the victim was about 18/19 years.

In his cross examination PW.2 stated that he does not know the contents of the FIR.

- 10. So, from the statement of prime witnesses i.e. the victim PW.1 and informant PW.2 it appears that they did not at all implicate the accused in the alleged offence of crime. Rather victim in her cross examination stated that nobody had kidnapped her and nobody did any bad acts with her and the informant also deposed in his evidence that as the victim went to the house of his sister in law without informing him and as such on suspicion he lodged the FIR against the accused. In view of the above evidence of the victim and the informant, the principal witnesses , the accused deserves to be acquitted.
- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/S 376 IPC and Sec. 6 of POCSO Act.
- 12. 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.

 $\mbox{ Judgment is pronounced and delivered in the open court on } \\ \mbox{this the } 19^{th} \mbox{ day of February, 2020.}$

Dictated and corrected by

(Darak Ullah)

Special Judge,

Special Judge,

Cachar, Silchar.

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer Gr. I

APPENDIX

- (A) PROSECUTION WITNESSES: -
- P.W. 1 victim
- P.W. 2 Abdul Sukkur
- (B) DEFENCE WITNESSES: NIL
- (C) PROSECUTION EXHIBITS: -
- Ext.1—statement of the victim
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.