IN THE COURT OF THE ADDL. SPECIAL JUDGE (F.T.C), LAKHIMPUR, NORTH LAKHIMPUR.

PRESENT

Sri P.C. Kalita, A.J.S., Special Judge(F.T.C), Lakhimpur, North Lakhimpur.

Special (POCSO) Case No.11/2017.

U/s-366 of IPC, R/w- Sec.4 of POCSO Act.

State of Assam
-Versus-

Sri Mukul Das, <u>Accused</u>.

APPEARANCE

For the State : Mr. M.Gogoi, Ld. Special P.P.

For the Accused : Mr. , Ld. Advocate.

Date of evidence : 23.05.2019, 03.07.2019, 04.07.2019.

Argument heard on : 05.07.2019. Judgment delivered on : **05.07.2019**.

JUDGMENT

- 1. The prosecution case, inter-alia, in brief, is that informant Smti. Lakhimai Das lodged an ejahar at Panigaon P.S. alleging that on 03.11.2016 at about 4 PM while her victim daughter (P.W.3) was going to nearby shop, the accused person Sri Mukul Das by inducing her, had taken away from the road and did sexual assault with her in the house of Nipen Das.
- 2. On receipt of the ejahar, the O/C of Panigaon P.S. registered a case vide Panigaon P.S. Case No.138/2016 dtd. 05.11.2016, u/s- 376/511 of IPC and then the police conducted the investigation of

the case and after completion of the investigation submitted charge-sheet u/s- 366(A) of IPC, R/w- Sec.4 of POCSO Act against the said accused person.

- 3. The case is received by this Court on transfer for disposal. On appearance of the accused person before this Court, copy is furnished to him. After hearing Ld. Advocates of both sides and perusing the materials on record, charge under section- 366 of IPC, R/w Sec.4 of POCSO Act are framed against the accused, the same are read over and explained to him to which he has pleaded not guilty.
- 4. During trial prosecution has examined as many as 5(five) witnesses. Considering the stand of PWs and at the instance of Ld. Special P.P., further prosecution evidence is closed. The accused person is examined under section 313 of the Cr. P.C. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **POINTS FOR DETERMINATION:**

- i) Whether the accused on or about 03.11.2016 at about 4:00 a.m. at village Na-ali Khawli under Panigaon P.S, had kidnapped (or abducted) the victim (a minor girl under the age of eighteen years), daughter of informant Smti Lakhimai Das, from the road by criminal intimidation or abuse of authority or by other methods of compulsion induced the said girl) with intent that she may be compelled (or knowing it likely that she will be compelled) to marry against her will or in order that she may be forced (or seduced) to illicit intercourse or knowing it likely that she will be forced (or seduced) to illicit intercourse with you, and thereby committed an offence punishable under Sections 366 of I.P.C. as alleged?
- ii) Whether the accused person, on the same date, time and place, after inducing the victim girl, had committed sexual assault on her person, inside the house of his brother-in-law namely, Nriten Das, and thereby committed an offence punishable under Section 4 of POCSO Act as alleged?

DISCUSSIONS, DECISION AND REASONS THEREOF:

- 6. I have carefully perused the evidence and the materials available in the case record. Heard arguments advanced by the Ld. Advocates of both sides. Now, let us examine the evidence on record to decide the case at hand.
- 7. PW.1, Dri Sashi Sonowal (M.O.) stated that on 06.11.2016 he was serving as Medical & Health Officer-1 at Panigaon SHC and on that day, at about 1:10 p.m., he medically examined the victim girl (aged about 11 ½ years), D/o- Sri Chana Das, R/o- Na-ali Khaboli, P.S.- Panigaon, District- Lakhimpur, on being escorted and identified by WHG/ Anjali Nath and on examination he found as follows:-

History of assault over chest region. Tenderness over the chest.

No any fresh injury mark seen over her body.

Opinion:- No fresh injury.

Ext.1 is his medical report and Ext.1(1) is his signature thereon.

8. PW.2, Smti. Lakhimai Das, informant-cum-mother of the victim girl, stated that she knows the accused person, who is of her same village. One day, about three years back, while her victim daughter was going to school on the way some boys teased her. One unknown boy of her village informed her about the incident that her daughter faced. She merely on suspicion lodged an ejahar against the accused person. Police recovered the victim, sent her for medical examination and also produced before the Court for recording her statement u/s 164 Cr.P.C. Later on, on being asked, her daughter told her that the accused person did nothing with her. She does not write the ejahar herself. She does not know about the contents of the ejahar.

Ext.2 is the ejahar and Ext.2(1) is her signature thereon.

- 9. PW.3, the victim girl, stated that the informant is her mother. She knows the accused person who is belonging to her same village. One day, about three years back, she was going for school and on the way some boys teased her. Then some unknown boys informed her mother about the incident and thereafter her mother immediately lodged an ejahar at Panigaon Police Station. Police recorded her statement u/s 161 Cr.P.C., sent her to Doctor for medical examination and also produced before the Court for recording her statement u/s 164 Cr.P.C. Ext.3 is her statement given in the Court and Ext.3(1), 3(2) and 3(3) are her signature thereon.
- 10. PW.4, Jitu Das, a co- villager, stated that he knows the informant, her victim daughter and the accused person. The victim girl is his niece. One day, about 3 years back, in the evening time while he was returning home on the way he met the informant who told him that her victim daughter was missing from home. He then along with the informant went to Panigaon Police Station and lodged an ejahar. The victim girl did not say him anything.
- 11. PW.5, Sana Das, husband of the informant and father of the victim girl (P.W.3), stated that one day, about 3 years back, at about 4 PM, he on arriving at home from his casual work, came to know from his wife that his wife had lodged an ejahar at Panigaon Police Station. He does not know as to why his wife lodged the ejahar. His victim daughter did not tell him anything.

Appreciation of evidence:

Offence u/s- 366 of I.P.C.

12. The victim (P.W.3) stated that on the day of occurrence while she was going to her school on the way some boys teased her.

The victim in her deposition nowhere stated that the accused person kidnapped her. Rather, in cross-examination she (P.W.3), stated that the accused person was not involved in the commission of the alleged offence. She gave her statement earlier in the Court as instructed by her co-villagers.

- 13. P.W.2, informant, the mother of the victim girl and P.W.5, father of the victim girl, nowhere stated that the accused person kidnapped their victim daughter (P.W.3).
- 14. P.W.4, is a hearsay witness and does not support at all the allegation of kidnapping.

15. (Offence u/s- 4 of POCSO Act.)

The deposition of the victim girl (P.W.3), is that on the day of occurrence some boys teased her on her way to school. This witness in her depositions nowhere stated that the accused person did any penetrative sexual assault on her.

In cross-examination, rather, she made it clear that the accused person neither did any bad acts or any sexual relation with her. Whatever she stated earlier in her statement recorded u/s 164 Cr.P.C., she stated as instructed by her co- villagers?

P.W.3 and P.W.5 are the parents of the victim girl (P.W.3). They also do not say anything regarding any sexual assault upon their victim daughter by the accused.

M.O. (P.W.1) found no fresh injury upon the victim girl (P.W.3). Thus, the M.O. also does not support any allegation of sexual assault upon the victim girl.

P.W.4, is hearsay witness and his evidence is of no help to the prosecution case.

It is, thus, seen that the ingredients of offence u/s 4 of

POCSO Act against the accused person, are lacking in the present case.

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16. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s-366 of IPC, R/w- Sec. 4 of POCSO Act against the accused person beyond all reasonable doubts. Hence, I acquit the accused person from the said offences.

- 17. The accused person is set at liberty forthwith.
- 18. The case is disposed of accordingly.

Given under my hand and seal of this Court on this 5^{th} day of July, 2019.

(P.C. Kalita) Special Judge (FTC), Lakhimpur, North Lakhimpur.

Dictated & Corrected by me:

(P.C. Kalita) Special Judge (FTC), Lakhimpur, North Lakhimpur.

Transcribed & typed by me: Sri Manish Kumar, (Steno)

APPENDIX:

Prosecution witnesses:
PW.1, Dr. Shashi Agarwal (M/O)
PW.2, Smti. Lakhimai Das (Informant)
PW.3, the victim girl.
PW.4, Jitu Das
PW.5, Sana Das

Prosecution exhibits:

Ext.1- Medical report.

Ext.2 - Ejahar

Ext.3- statement u/s- 164 of Cr.P.C.

Defence witnesses:

Nil.

<u>Defence exhibits:</u>

Nil

(P.C. Kalita) Special Judge (F.T.C), Lakhimpur, North Lakhimpur.