IN THE COURT OF THE SPECIAL JUDGE :::::::::::: HAILAKANDI

## Special (POCSO) (T-1) Case No. 08/2018

(Under Sec. 366(A)/376 of I.P.C. R/W Sec. 4 of POCSO Act, 2012)

#### **State**

Versus

Siddek Ali Laskar

..... Accused.

PRESENT :- Sri D. Bhattacharjee, AJS, Special Judge, Hailakandi.

## Appearance and particulars:-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the Accused

:- Sri A.H. Laskar, Ld. Advocate.

Dates of recording evidence of PWs. :- 23.03.2018, 23.04.2018, 31.05.2018,

14.06.2018, 28.06.2018, 23.07.2018 &

05.09.2018.

Date of recording statement U/S 313 Cr.P.C. :- 18.09.2018.

Date of Argument

:- 16.11.2018.

Date of Judgment

:- 30.11.2018.

## JUDGMENT

- 1. The prosecution case, in brief, is that on 28.10.2016 one Abdul Kalam Laksar lodged an FIR with the O/C, Algapur Police Station alleging that on 27.10.2016 at about 1 PM while he was in his work at Algapur Market, the accused kidnapped his minor daughter (name withheld). In spite of vigorous search, he could not trace her out till lodging the FIR.
- 2. On receipt of the FIR, Algapur PS Case No. 205/2016 was registered under sec. 366(A) of IPC and SI of Police Sri J.U. Choudhury was Contd......P/2.

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entrusted to investigate the case. During investigation, police visited the place of occurrence, recorded the statement of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CrPC, arrested the accused person and forwarded him to the court and after completion of investigation, submitted charge sheet under Sec. 366(A) of IPC.

- 3. The Ld. Addl. CJM., Hailakandi in compliance with Sec. 207 of CrPC, furnished copies of relevant materials to the accused persons and since the offence is exclusively sessions triable, committed the case to this Court.
- 4. On appearance of accused person, heard the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials on record, initially the charge was framed against the accused under Sec. 366(A) of IPC. Thereafter, the charge under Sec. 376, IPC read with Sec. 4 of POCSO Act has been added. The charges so framed have been read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.
- The prosecution in order to prove its case, examined all together 7 PWs including MO & IO. The defence plea is of total denial. The accused person was examined under Sec. 313, CrPC wherein he denied all the allegations levelled against him by the prosecution witnesses and pleaded that due to grudge of land dispute, he has been falsely implicated in the case.
- **6.** Heard argument of the Ld. Public Prosecutor and the Ld. Defence Counsel.

#### **POINTS FOR DETERMINATION**

- (I) Whether the accused person on 27.10.2016 at about 1:00 P.M. at Bornagad under Algapur Police Station kidnapped the victim, minor daughter of the informant Abdul Kalam Laskar, with intent that she may be or knowing it likely that she will be forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366(A) of I.P.C.?

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minor daughter of the informant Abdul Kalam Laskar, and thereby committed an offence punishable under Section 376 of I.P.C.?

(III) Whether the accused person on 27.10.2016 at about 1:00 P.M. at Bornagad under Algapur Police Station committed penetrative sexual assault on the victim, minor daughter of the informant Abdul Kalam Laskar, and thereby committed an offence punishable under Section 4 of POCSO Act, 2012?

# **DISCUSSIONS, DECISION AND REASONS THEREOF**

The PW. 1, Abdul Kalam Laskar has deposed that the accused is his next door neighbour. On 27.10.2016 he was in his place of work at Algapur market, at about 3 PM he returned home and found that his wife was searching his daughter, aged about 11 years. His wife reported him that from 1 PM their daughter was found missing from his house. They made search but with no effect. He went to the house of accused but found him absent from the house. On the next day, he lodged the FIR against the accused as he was too not found in the locality. Thereafter, after 15 days, the accused took his daughter to his (PW.1) father in law's house situated near to his house and then they all apprehended the accused and handed over him to police. The accused is a married person having children. On being asked, his daughter reported him that the accused took her to Silchar Nagatilla in a rented house. His daughter did not tell him anything more. At the relevant time, the victim read in Class V.

In cross examination, he has stated that the house of accused is situated to the adjacent North of his house and to the further North, the house of his father in law is situated. In the house of accused, his sister, nephew and nephew's wife reside. The accused is his own uncle in law. There are in total 12/13 members residing in the house of his father in law. He cannot say the name of school where his daughter was studying. He cannot say the exact date of birth of his daughter. He handed over the school certificate of his daughter to the police. He has further stated that there is only one path to reach Algapur market from his house and the people of entire area use the path. No neighbouring people have been cited as witness by police in the case.

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The PW. 2, Mamata Begum Laskar, the mother of the 8. victim has deposed that on the relevant day at about 12 Noon she went to her mother's house keeping the victim alone in the house as she came from school. At that time, her other children were also not in the house. At about 3 PM she returned home from her mother's house but did not find her daughter viz. the victim. Her husband and son were informed, they came and started searching for the victim. On the next day, her husband lodged the FIR. Thereafter, after 15 days, her husband saw the accused coming towards their house along with their daughter and then her husband apprehended the accused and informed police. Police came and took the accused. Police got her daughter medically examined and also her statement was recorded by Magistrate under Sec. 164, CrPC. On being asked, her daughter reported that when she was alone in the house, the accused appeared and allured her saying that he would purchase a dress for her and asked her to accompany him, accordingly, her daughter went with the accused but the accused took her in a different path, not through the usual path, used by them, thereafter, her daughter saw a black colour auto rickshaw appeared and the accused took her in the auto rickshaw, thereafter she cannot say anything and the accused took her at Nagatilla, Silchar where the accused did sexual intercourse with her against her will. The PW. 2 has further stated that the accused is her own uncle and at the relevant time, her daughter was a student of Class V and she was aged 11 years 7 months.

In cross examination, she has stated that her mother's house is at a distance of 3 cubits from her house. The accused Siddek Ali has got his sister, nephew and nephew's wife in his family. The house of accused is around 6/7 cubits far from her house. Since the accused is her own uncle, she had visiting terms with him. The surroundings of her house having thick population and amongst them, the houses of Jamir Uddin Laskar, Saraf Uddin Barbhuiya and others are adjacent to her house. The accused does not have any landed property of his own.

**9.** The PW. 3, the victim has deposed that on 27.10.2016 at about 12 PM she returned home from school and at that time, she was alone in *Contd......P/5.* 

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the house. Then the accused, who is her mother's own uncle, came to her house and asked her to go with him as he would purchase clothe for her. She at first refused but the accused was persistent to take her and then the accused took her at a little distance towards a path and then he took her in a Alto vehicle. Then, she started crying and said the accused that she would disclose the same to her mother. The accused pressed her mouth in the vehicle. The driver asked the accused as to why she was crying, the accused replied that she was crying for purchasing clothe but since she was gagged, she could not say anything. After journey of 2 hours, the accused took her in a house and kept her there for 15 days. She does not know the name of the place. During the said 15 days, the accused committed bad acts with her for 3 times. She raised hue and cry but none heard it, because there was no nearby house. After 15 days, the accused took her to her house and after leaving her, he wanted to flee away but her father caught him and handed over to police. Police got her examined medically and her statement was recorded under Sec. 164, CrPC vide Ext. 1. She has further stated that at the relevant time, she was 11 years old. Her father lodged the FIR before her recovery.

In cross examination, she has stated that three wheelers and two wheelers vehicle run over the path which connects Algapur main road from her house. The house of her maternal grand-father is situated at the distance of around 30 meters from her house. Her house is surrounded by the houses of many people. Police did not take her to the house where she was kept for 15 days. During her stay in the house, the accused provided food to her purchasing from a shop. There was a pond near the house where she was kept, in which she used to take path. She used to attend nature's call outside the house. The house was situated in a town like place. She does not know her date of birth. She did not take any extra cloth for but the accused provided cloths to her. There was stain including blood in her garments which she showed to the police but the police did not seize it.

**10.** The PW-4, Ramjana Begum Laskar, the sister of the victim, has deposed that the accused is the uncle of her mother. On the relevant day, at

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about 12:30 P.M. she and the victim returned home from school and thereafter, keeping the victim in the home, she went to her maternal grand-father's house which is near to her house. After sometime, her mother came to home and raised hue and cry. She rushed to her house and heard that the accused took away her sister Asmina. After about 15 days, the accused secretly took her sister but her father nabbed him.

In cross examination, she has stated that she cannot say from whom she came to know that the accused took away her sister.

The PW-5, Majaraf Ali Laskar has deposed that the accused is his younger brother. The informant is his son-in-law. About two years back, at about 4 P.M. when he returned home, he heard that the victim was missing and his daughter and other family members were crying and searching for her. Thereafter, the informant filed the case. After 15 days, when he returned home from market, he came to know that the accused came along with the victim and then the informant apprehended him and handed over to police. On beign asked, the accused told him that he stayed with the victim at Silchar.

In cross examination, he has stated that he did not see the act of kidnapping as well as taking back of the victim by the accused. The accused appeared with the victim during dusk hour.

Officer of the case, has deposed that on 28.10.2016, the Officer-in-charge of Algapur Police Station received an FIR from Abdul Kalam Laskar and entrusted him to investigate the case. During investigation, the Officer-in-charge got the victim medically examined and also got her statement recorded under Section 164 of Cr.P.C. He examined the witnesses, visited the place of occurrence and drew up rough sketch map thereof. The accused was arrested by the Officer-in-charge. After completion of investigation, he submitted charge sheet against the accused.

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7:45 P.M. the victim was produced before police by parents. He did not make *Contd......P/7.* 

any inquiry about the place where the victim was kept at Silchar. Apart from the statement of victim, there was nothing revealed during investigation whether the victim and the accused stayed at Silchar nor not. The PW-1, Abdul Kalam Laskar did not state before him that after 15 days of missing of his daughter, the accused took her to house of his (PW-1) father-in-law. The PW-1 also did not state before him that on the relevant day, his daughter returned home from school and then she was found missing from the house and they made search even in the house of accused person. He has further stated that the PW-2, Mamata Begum Laskar did not state before him that about 18 months back one day at about 12 Noon, she went to her mother's house keeping her daughter (victim) alone in the house and on her return at about 3 P.M. she did not find her daughter in the house and then neighbouring people informed her husband and her son about the same, they came and came search but could not trace her out. The PW-2 also did not state before him that the accused took her daughter through an unused path and thereafter an auto rickshaw appeared and her daughter was forcefully dragged inside the said auto rickshaw and this witness also did not statement him that after 15 days of missing of her daughter, her husband found the accused with her daughter coming towards his house and then her husband apprehended the accused in front of his house and after recovery, the victim reported them that the accused forcibly committed sexual intercourse with her. He has further stated that the PW-3, victim did not state in her statement recorded under Section 161 Cr.P.C. that the accused Siddek Ali came to her house and told her to go with him as he would purchase clothes for her and she refused but the accused was persistent to take her with him, accordingly, the accused took her at a little distance towards a path and then he took her in an Alto vehicle, then she started crying and told that she would disclose the same to her mother , then the accused pressed her mouth, the driver asked the accused as to why the victim was crying, the accused replied that she was crying for purchasing clothes, since she was gagged and she was unable to say anything and the accused took her by the said vehicle after affording journey for around 2 hours. The PW-4, Ramjana Begum Laskar did not state before him that she and the victim were the students of Noor Nabi Pre-Contd.....P/8.

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senior Balika Madrassa. The PW-5, Majaraf Ali also did not state before him that the accused confessed before him that he stayed with the victim at Silchar. The I.O. has further stated that he did not examine any neighbouring people from the place of occurrence as they were not interested to say anything.

- 13. The PW-7, Dr. Rehana Begum has deposed that on 11.11.2016 she examined the victim and found no mark of violence on her body or private parts, no evidence of recent intercourse and the actual age of the victim could not be determined due to non-availability of X-ray report.
- In the backdrop of above evidence, at the very outset, it is 14. to be determined that what was the age of the victim at the relevant point of time. The PW-1, father of the victim has deposed that at the relevant time, the victim was aged about 11 years and a student of Class-V but in cross examination, he has stated that he cannot say the exact date of birth of his daughter. The PW-2, mother of the victim has testified that at the relevant time, victim was aged 11 years 7 months and student of Class-V. The PW-3, victim has also stated that at the relevant time, she was 11 years old but in cross examination, she has stated that she does not know her date of birth. From the evidence of above three witnesses, it is appeared that at the relevant time, the victim was aged about 11 years. Though the PW-1, father of the victim has stated in the cross examination that he handed over the school certificate of his daughter to police but no such school certificate has been seized by the police nor been produced before this Court. Except the oral evidence of the witnesses, there is no documentary evidence available on record as regards age of the victim. Now, it is to be seen, whether any opinion has been given by the doctor who examined the victim medically, as regards age of the victim. The PW-7, Medical Officer, who examined the victim, has testified that the actual age of the victim could not be determined due to non-availability of X-ray report, therefore, there is no scope of getting the radiological age of the victim. However, since the above oral evidence of the witnesses was not denied by the defence, it is presumed that the victim was aged about 11 years at the relevant time and she was minor.

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The Ld. Special Public Prosecutor during his argument strenuously submitted that the crime which has been committed by the accused is proved beyond all reasonable doubt and considering the heinous nature of the offence, the accused shall be convicted and given exemplary punishment.

Per contra, the Ld. Counsel for the defence has submitted that the accused has been falsely implicated in the instant case only to meet the grudge of land dispute and in support of said contention, the attention of this Court has been drawn to the following aspects:-

- The PW-3, victim has deposed that on 27.10.2016 at about 12 Noon when she returned home from school and was alone in the house, the accused who is the own uncle of her mother, came to her house and asked her to go with him as he would purchase some clothes for her and thereafter, she went with the accused. But in her statement recorded under Section 164 of Cr.P.C. vide Ext.-1 she has stated that on 28.10.2016 while she came out of her school to purchase biscuits, the accused appeared and told her that he would purchase biscuits for her from market and asked her to sit in an alto car.
- (ii) The PW-3 has testified that she was taken away by the accused in an alto vehicle but the PW-2, mother of the victim who came to know about the occurrence from the victim, has stated that the accused kidnapped the victim from her house in an auto rickshaw.
- The PW-2 has stated that she was reported by the victim that after the victim was taken in the auto rickshaw, the victim could not say anything but the victim has stated that when the accused started proceeding with her with the alto vehicle, she started crying, then the accused pressed her mouth, then the driver asked the accused about the reason of her crying, the accused replied that she was crying for purchasing clothes but as she was gagged, she could not say anything and thereafter, the accused took her to Silchar.

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- (iv) The victim in evidence has stated that after 15 days, the accused took her to her house and after leaving her, when the accused wanted to flee away, her father caught him and handed over to police. The victim in her statement under Section 164 of Cr.P.C. has stated that the accused brought her till Algapur and then her family members apprehended him. The PW-1 has stated that when the accused brought his daughter to his father-in-law's house, which is very nearer to his house, they all apprehended the accused and handed over to police. But the PW-6, Investigating Officer has not stated anything to that effect and there is no material on record to substantiate the above fact that the accused was apprehended by the father of the victim in his house.
- (v) The victim has stated that she does not know the name of the place where the accused took her after two hours journey and kept her for 15 days but in her statement under Section 164 of Cr.P.C. she stated that the accused took her to Silchar and kept her in a room. The PW-2 has stated that she was reported by the victim and the accused took her to Silchar in a place namely Nagatilla.
- (vi) The allegation is that the accused took the victim to Silchar and stayed there with the victim for 15 days but the Investigating Officer did not take any step to enquire about the same, even he did not visit the said place to ascertain the genuineness of the allegation.
- (vii) The PW-5 has stated that after 15 days when the accused returned back with the victim and was apprehended by the informant, on being asked, the accused told him that he stayed with the victim at Silchar but the evidence of PW-6, Investigating Officer reveals that the PW-5 did not state the same before police.
- (viii) Admittedly, there are houses of many neighbouring people in and around the house of the victim but the prosecution failed to examine any of them.

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- **16.** After hearing the submissions of the Ld. Counsels, I have gone through the evidence available on record and found that the submission put forwarded by the Ld. Counsel for the defence deserves some merit as points which have been raised by him are very much basing on the evidence on record.
- The allegation is that the victim, a minor girl was kidnapped from her house by the accused, who is her mother's own uncle on the pretext that the accused would purchase clothes for her and thereafter, the accused took her to Silchar and kept for 15 days where the accused did sexual intercourse with her and thereafter, when the accused brought the victim in the house of her maternal grand-father and after leaving her there, when he attempted to flee away, he was apprehended by her father and handed over to police. In the context of the above allegation, at first the kidnapping should be proved and if the act of kidnapping is proved then the other aspects such as sexual intercourse etc. would be taken for consideration.
- 18. As discussed above, the evidence of the victim (PW-3) and the other witnessesas well as the FIR disclosed the date of occurrence is on 27.10.2016 but the victim in her statement under Section 164 of Cr.P.C. vide Ext.-1 has stated the date of occurrence is on 28.10.2016. The PW-4, the sister of the victim has deposed that the on the relevant day, she and the victim returned home from school together and thereafter, she went to her maternal grand-father's house keeping the victim alone in the house and then the victim was kidnapped. The victim has testified that when she returned home from school, she was alone in the house and then the accused came. Therefore, the evidence of PWs.-4 & 3 is that they safely returned home from school and thereafter, the victim was kidnapped from the house. But the victim in her statement under Section 164 of Cr.P.C. has stated that when she came out of school for purchasing biscuits, the accused kidnapped her and this statement of the victim signifies that she was not kidnapped from her house and thus, due to the inherent inconsistencies, it is very difficult for this Court to understand as to which one of the statements of the victim is true and correct. Further, the victim has stated in her evidence that the accused compelled her to go with him for

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purchasing some clothes for her but in the statement under Section 164 of Cr.P.C. she has stated that on the pretext of purchasing biscuits, the accused took her. The victim testified that she was kidnapped in an alto vehicle but the PW-2, mother of the victim, who was reported about the incident by the victim, has stated that the victim was taken away in an auto rickshaw. Thus, it is appeared that the evidence of the victim is highly inconsistent with her previous statement made before Magistrate. Also, she did not state all such things before police in her statement under Section 161 of Cr.P.C. She did not state before police that the accused came to her house and told her to go with him as he would purchase clothes for her and accordingly, the accused took her in an alto vehicle and when she started crying, the accused pressed her mouth, the driver asked the accused as to why she was crying, the accused replied that she was crying for purchasing clothes but she could not say anything as she was gagged and thereafter, the accused took her with the said vehicle after travelling two hours. From the above, it is further appeared that the victim has developed her earlier version.

- The mother of the victim (PW-2) has stated that when the accused took her daughter in the auto rickshaw, her daughter could not say anything but from the evidence of the victim, it is found that the victim was very much conscious and able to realise the entire acts of accused. The victim has stated that she does not know the name of the place where she was taken by the accused and kept for 15 days but in her statement under Section 164 of Cr.P.C. she stated that she was taken to Silchar. Due to the above inconsistencies in the evidence of the victim and the other witnesses as well as her earlier statements, it is very hard to believe the case of the prosecution. Further, the Investigating Officer did not even visit the place where the victim was taken after kidnapping and kept for 15 days, which itself casts serious doubt in the prosecution case and probabilizes the defence case i.e. out of grudge of land dispute, the accused has been falsely implicated in the instant case.
- 20. Under the facts and circumstances of the present case as well as taking into consideration the above contradictions and inconsistencies, *Contd......P/13.*

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this Court is of the opinion that the prosecution failed to prove its case against the accused beyond all reasonable doubt.

- 21. Accordingly, the accused person Siddek Ali Laskar is acquitted of the offence charged under Section 366(A)/376 of I.P.C. read with Section 4 of the POCSO Act, 2012. Set him at liberty forthwith.
- 22. The bail bond of the accused person stands discharged.
- 23. The Special (POCSO) Case is disposed of accordingly.

Given under my hand and seal of this Court on this the 30<sup>th</sup> day of November, 2018 at Hailakandi.

Special Judge, Hailakandi. PEGIAL JUDGE HAILAKANDI

Dictated and corrected by me:

Special Judge, Hailakandi.

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<u>Dictation is taken and transcribed by Samsher Bahadur, Stenographer</u> <u>Grade – III.</u>

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### Appendix :-

### **Oral Evidences:-**

PW-1, Abdul Kalam Laskar.

PW-2, Mamata Begum Laskar.

PW-3, Victim.

PW-4, Romjana Begum Laskar.

PW-5, Majaraf Ali Laskar.

PW-6, Jaynul Uddin Choudhury.

PW-7, Dr. Rehana Begum.

## **Documentary Evidences:-**

Ext.-1, Statement of the victim under Section 164 of Cr.P.C.

Ext.-2, FIR.

Ext.-3, FIR Form.

Ext.-4, Rough sketch map of the place of occurrence.

Ext.-5, Charge sheet.

Ext.-6, Medical report.

Ext.-7, X-ray report.

Ext.-8, Vaginal swab examination report.

The defence declined to adduce any evidence.

Special Judge, Hailakandi.

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