IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS Special Judge, Sivasagar.

Spl. (P) Case No. 06 of 2019 u/s 366 IPC & Section 6 of POCSO Act, 2012 (Arising out of GR Case No. 650/2018)

State of Assam

-Vs-

Sri Maneswar Tanti Accused

<u>Committing Magistrate</u>: Sub-Divisional Judicial Magistrate (M), Nazira.

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D.M. Neog, Advocate

(Legal Aid Counsel)

Date of framing Charge : 06.02.2019
Dates of Evidence : 01.04.2019
Date of Argument : 01.04.2019
Date of Judgment : 01.04.2019

<u>JUDGMENT</u>

1. Prosecution case in brief is that on 08.11.2018, one Smt. Puni Konwar lodged an FIR with O/C, Gelakey P.S. alleging, inter alia, that on 01.11.2018, while she went to Bagan for work and her 11 years old daughter victim 'B' (name withheld) was alone in her house, taking advantage of absence of other family members in the house, accused Maneswar Tanti, who is a resident of Athkhel Tea Estate, kidnapped the victim by calling her near to him over phone. On this, they searched for the victim and subsequently, on knowing

her stay at the residence of accused, on 08.11.2018, informant went to the house of accused and saw the victim there, but accused did not allow her to bring back the victim with her.

- On receipt of the FIR, Gelakey P.S. Case No. 168/2018 u/s 366 IPC was registered and investigated. During investigation, victim was recovered and she was medically examined and also recorded her statement in the Court u/s 164 Cr.P.C. Accused was arrested and forwarded to Court for judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the accused u/s 366 IPC and Section 6 of POCSO Act 2012.
- 3. Since the offence u/s 366 IPC and Section 6 of POCSO Act is exclusively triable by Hon'ble Special Judge, as such vide order dated 10.12.2018, learned Sub-Divisional Judicial Magistrate (M) Nazira, has transferred the instant case to the Court of Special Judge, Sivasagar for trial with the accused in Jail custody. Accordingly accused Maneswar Tanti was produced before this Court for trial.
- 4. Upon taking cognizance on the charge sheet and after furnishing copy to the accused, vide order dated 06.02.2019, charges u/s 366 IPC and Section 6 of POCSO Act 2012 has been framed against the accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses viz. the informant and victim only.
- 5. Examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material found against the accused for the alleged offence in the evidence of informant and victim. Considering nature of the evidence, I propose to dispose the case by applying powers u/s 232 Cr.P.C without calling the accused to enter into defence.
- 6. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. D.M. Neog, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE -

- 7. (I) What was the age of the victim on 01.11.2018?
 - (II) Whether on 01.11.2018, accused Maneswar Tanti kidnapped/abducted the victim? If so, what was the intention of the accused behind such kidnap/abduction?
 - (III) Whether victim was subjected to aggravated penetrative sexual assault by the accused Maneswar Tanti?

DECISION AND REASONS THEREOF

8. PW 1 Smt. Puni Konwar, the informant as well as mother of the victim in her evidence deposed that presently victim is aged about 17 years. She read upto Class-III and left the school long back. On 01.11.2018, at about 4 PM, on returning from work place, from her daughter-in-law Gitanjali Konwar, she came to know that her daughter victim 'B' is not in the house. On this, they searched for her. After 2-3 days, Ramdewal Sonowal informed her that she saw the victim at Athkhel in the residence of one person. On knowing this, she went to Athkhel and came to know that victim was at the residence of accused Maneswar in bridal dress. Mother of accused did not allow her to bring back the victim with her. On this, she lodged the FIR at Gelakey P.S. Police apprehended the accused and recovered the victim from the house of accused at Athkhel. Police took the victim for medical examination and also brought her to Court. From Court victim was given in her custody. On asking the victim, she informed her that accused took her with him in a Maruti Van by calling her near to battalion. Presently victim is with her. In her cross-examination, she admitted that she has stated the age of victim on assumption. Prior to this incident, her daughter victim 'B' used to work in Bagan for about two years. PW 1 further admitted that on the previous day of the incident, she has scolded and slapped victim 'B' for talking to accused Maneswar. On her scolding, victim called the accused and on her own, she left her house. She denied that while giving statement to police, she has not stated that "After 2-3 days, Ramdewal Sonowal informed her that she saw the victim at Athkhel in the residence of one person,

and that on asking victim, she informed her that accused took her with him in a Maruti Van by calling her near to battalion." PW 1 further stated that on returning home, her daughter-in-law informed her that victim 'B' left the home while talking to someone over phone. She cannot say, if victim was aged above 18 years. She has no objection in acquittal of the accused from this case.

- 9. PW 2 the victim in her evidence deposed that presently she is aged about 17 years. She read upto Class-III and left the school long back. PW 2 further deposed that due to talking with Maneswar over phone, her mother assaulted her. For the incident of assault, on 01.11.2018, at about 12 noon, she called Maneswar to take her with him for visit. On this, she came near to Singibil Market with a vehicle and took her with him to his house at Athkhel. She stayed at his house on her own for about a week. On knowing her stay at Athkhel, her mother came to the house of Maneswar, but she refused to come with her mother. Subsequently, police came there and apprehended the accused and brought her from the house of accused. Police took her for medical checkup and also brought her to Court where she gave her statement. On that day she deposed in similar lines as deposed today. From Court she went with her mother. About a month back, she was married to another boy. In her crossexamination, the victim has admitted that she has stated the age as told to her by her mother. She also stated that as her mother used to scold and assault her, she refused to return from the house of Maneswar. She cannot say if her present age is about 19 years. She admitted that accused did not put force on her for going with him. She has no objection for acquittal of the accused from this case.
- 10. <u>Point No. I:</u> On careful perusal of evidence as narrated above, so far age of the victim is concerned; it appears that no document on age is proved by prosecution. Victim and her mother claimed the age of victim as 17 years and in cross admitted that they are stating the age on assumption only. On looking at the medical examination report of the victim, it appears that

following radiological examination reports, the medical officer has opined the age as between 18-19 years. Having, no other material on record, I find it just and proper to rely on age determined by radiological examination process and thus hold that on the alleged date of incident victim was above the age of 18 years.

- 11. Point II: So far roll of the accused in alleged offence of abduction, PW 2, the victim in her evidence nowhere stated that accused by using force took her with him to his house at Athkhel; rather her evidence reflects that as her mother (PW 2) assaulted her due to talking with accused Maneswar, on the day of incident, i.e. on 01.11.2018, at about 12 noon, by calling the accused near to Singibil Market, she went with him in a vehicle on her own and stayed in the house of accused for about a week. The fact of going of the victim with the accused in a vehicle was also stated by PW 1, mother of the victim, who in her evidence, stated that on asking victim, she informed her that accused took her with him in a Maruti Van by calling her near to battalion. The victim further refused to return from the house of accused Maneswar while her mother tried to bring her back.
- 12. <u>Point No. III:</u> So far charge of sexual assault is concerned, from the evidence PW 2 the victim, it appears that she is totally silent regarding commission of penetrative sexual assault or even sexual assault on her by the accused during her stay at the residence of accused.
- 13. From the above discussion, it is crystal clear that there is no material in the evidence of PW 1 and PW 2 regarding allegation of kidnap/abduction as well as allegation of aggravated penetrative sexual assault by the accused.
- 14. Considering the above evidence on record, I am of the opinion that prosecution has failed to prove the ingredients of charges u/s 366 IPC and Section 6 of POCSO Act 2012 against the accused Sri Maneswar Tanti. As such,

accused Sri Maneswar Tanti is acquitted from the charges u/s 366 IPC and Section 6 of POCSO Act, 2012 and set at liberty forthwith.

- 15. No order is passed u/s 437-A Cr.P.C. as accused is in Jail custody.
- 16. Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357 (A) Cr.P.C.
- 17. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 18. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 1st day of April, 2019 at Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

1. <u>Prosecution witnesses</u>:

PW 1 – Smt. Puni Konwar (Informant)

Pw 2 - Victim 'B'

- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution None

Special Judge Sivasagar