District-HOJAI.

IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE: FAST TRACT COURT: HOJAI, SANKARDEV NAGAR.

Present: N. Senabaya Deori, A.J.S Addl. Dist. & Sessions Judge, Hojai.

Spl. POCSO Case No. 35/2018

U/s. 366 IPC r/w s-4 of POCSO Act.

State

Vs.

1. Md. Anowar Hussain S/o, Muslim Seikh,

r/o, Dimarupar

Dist. Hojai, Assam.

..... Accused Person.

Charge framed on : 18/07/18,

Prosecution Evidences recorded on : 15/09/18, 24/01/19

Argument heard on : 05/02/19, Judgment delivered on : 05/02/19,

Ld. Counsel for the State : Sri Amar jyoti Saikia,

Addl. P.P. Hojai.

Ld. Counsel for the Accused person: O.P. Pandey,

Advocate, Hojai Bar.

I U D G M E N T

This case arose out of Doboka P.S. Case No. 112/2018 u/s. 366 IPC r/w s-4 of POCSO Act, upon the gist of the facts stated in the FIR which has set this criminal case in motion against accused person.

1. The prosecution version, in short campus, is as follows: An Ejahar was lodged by one Md. Seikh Ahmed on 29-04-18 at about 10.00 p.m. alleging that on 29-04-18 at about 4.30 p.m. in their absence at home, one white colour car came to his house with 2/3 persons. They have kidnapped his minor daughter Masuma Akhtar aged about 17 years from his house. Subsequently, they came to know that accused Anowar Hussain kidnapped his daughter. Hence, the prosecution case against the accused person.

2. On receipt of the *Ejahar* the I/O visited the place of occurrence and recorded the statement of the witnesses u/s-161 Cr. P.C. and prepared the case diary u/s-172 Cr.P.C. Having found materials against the accused in the Case Diary, the I.O. submitted charge sheet against them under Sections-366 IPC r/w s-4 of POCSO Act, to face the trial before the court. During trial of the case, accused person entered appearance before the court of the Ld. Magistrate and the relevant copies were furnished to them u/s-207 Cr.P.C. The charges u/ss. 366 IPC r/w s-4 of POCSO Act, were framed against accused person and the contents of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION:-

- (I) Whether the accused person on 29-04-2017 at about 4.30 p.m. kidnapped the minor daughter of the informant with intent compel her to marriage with him or with other?
- (II) Whether the accused person on 29-04-2017 at about 4.30 p.m. committed sexual assault the daughter of the informant, as alleged? DISCUSSION, REASONS AND DECISION THEREOF:-
 - 4. In the instant case, the prosecution side has examined as many as 2 (two) witnesses namely, Saleh Ahmed(P.W.-1) and Masuma Akhtar as P.W.-2, in support of prosecution case; whereas, the accused person has adduced none of the witnesses for his defence.
 - 5. In the evidence of P.W-1, Saleh Ahmed is to the effect that he is the informant of this case and he knows the accused person. Victim girl is his daughter. The occurrence took place about 29/04/18 at about 4.30 p.m. and his family members were not at home. While coming back they did not find her daughter at home. Subsequently, he filed this case against the present accused person. Ext—1 is the FIR and Ext—1(1) is his signature. In the cross, he deposed that the present accused persons were not present at the time of occurrence. He has no objection if the accused persons are acquitted by the Hon'ble court from this case. Similarly, without any departure, P.W- 2, Masuma Akhtar stated that on the relevant day of occurrence the informant was alone at home. The occurrence took place on

6 months ago. She went with the accused without asking her parents. Police brought her to court for recording her statement and the same is exhibited as Ext.-2 and Ext-2(1) and Ext.-2 (2) are her signatures. In the cross, she stated that she was compelled to deposed against the accused person by her parents.

- 6. Ld. Defence Counsel humbly submitted that every accused is presumed to be innocent unless the guilt is proved. The courts must be on guard to see that merely on the application of the presumption; the same may not lead to any injustice or mistaken conviction. In the present case, there is no whisper of evidence on record implicating the accused in perpetration of alleged offence and thus, accused person deserve acquittal forthwith.
- 7. It transpires from 'Ejahar' filed by the father of the victim girl that on 29-04-18 at about 4.30 p.m. in their absence at home, one white colour car came to his house with 2/3 persons. They have kidnapped his minor daughter Masuma Akhtar aged about 17 years from his house. Subsequently, they came to know that accused Anowar Hussain kidnapped his daughter. The said fact has not been corroborated in the evidence of informant (P.W.-1) and victim (P.W.-2). P.W-1, Saleh Ahmed stated that Victim girl is his daughter. The occurrence took place about 29/04/18 at about 4.30 p.m. and his family members were not at home. While coming back they did not find her daughter at home. Subsequently, he filed this case against the present accused person. Similarly, without any departure, P.W- 2 stated in her evidence that the occurrence took place on 6 months ago. She went with the accused without asking her parents. There is no whisper of evidence that the accused person on 29-04-2017 at about 4.30 p.m. kidnapped the minor daughter of the informant with intent compel her to marriage with him or with other or accused person committed sexual assault the daughter of the informant. That being the evidence on record, it can safely be concluded that the prosecution has failed to bring the offence alleged against the accused person under sections-366 IPC r/w s-4 of POCSO Act and thereby the accused person is entitled to the benefit of doubt.
- 8. In summing up of evidence on record in its entirety and assessment thereof, this court arrived at the conclusion that the prosecution has failed

to prove the alleged offence beyond all reasonable doubt against the accused person. Therefore, this court holds the accused Md. Anowar Hussain not guilty of the offences under sections-366 IPC r/w s-4 of POCSO Act and he is acquitted and set at liberty forthwith.

Bailbond against the accused person is extended till six months under the same bailor.

Given under my hand with the seal of this court on this 5th day of Feb., 2019.

(N. Senabaya Deori) Addl. Dist. & Sessions Judge, Hojai.

<u>APPENDIX</u>

1. Prosecution Witnesses:-

P.W.-1, Saleh Ahmed

P.W.-2, Masuma Akhtar

2. Defence witnesses:-

Nil

3. Prosecution Exhibits:-

Ext.-1, Ejahar,

Ext.-2, Statement recorded under section-164 Cr.P.C.

4. Defence Exhibits:-

Nil

(N. Senabaya Deori)

Addl. Dist. & Sessions Judge, Hojai.