

(U/S 366 IPC and Sec.4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of AssamComplainant.

-Versus-

Kalajamun Rikiason alias Bikram.....Accused.

Argument heard on:-14.2.2020.

Judgment pronounced and delivered on:-..... 14.2.2020.

<u>Counsel Appeared:</u>

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr. N. Nag, Advocate.

JUDGMENT

1. The prosecution case, in brief, is that the informant lodged an FIR with the Udharbond P.S. stating the facts that on 3/1/19 at about 6 p.m. the informant had gone to market keeping her minor daughter(victim) in the house but when he returned he found her said daughter missing. On query and search the informant came to know that his minor victim daughter was kidnapped by the accused with the help of other three FIR named accused persons from the house. When the

informant approached the co- accused persons who are mother and brothers of accused to hand over the victim to the informant, they assured as such but they did not at all hand over victim to the informant.

- 2. On receipt of the FIR, O/c Udharbond PS registered a regular PS case vide Udharbond P.S. Case No.6 of 19 U/S 366/34 of IPC . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet only against accused person U/S 366 of IPC r/w Sec.4 of POCSO Act.
- 3. As the offence is U/S 366 of IPC r/w Section 4 of POCSO Act being exclusively triable by the Court of Special court , Id. CJM Cachar, Silchar sent the case record to this court and subsequently in due course after hearing both sides formal charge U/S 366 IPC and Section 4 of POCSO Act was framed by this court against the accused person. The charge having been read over and explained, the accused person pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (1) Whether the accused person on 3/1/19 at about 6 p.m. at Kashipur T.E. under Udharbond PS had kidnapped the victim, the daughter of the informant with intent that she may be compelled to marry against her will or knowing it to be likely that she will be compelled to marry against her will or in order that she will be forced or seduced to illicit intercourse, as alleged?
- (2) Whether the accused person committed penetrative sexual assault upon the victim, as alleged ?
- 5. From the prosecution side as many as 2 witnesses i.e., the the victim and the informant have been examined . On the submission of the ld.

Spl.(POCSO) Case No.8/19

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, the victim deposed in her evidence that the occurrence took place on 03.01.2019. She further deposed that she was in love affairs with Kala Jamun Rikiason @ Bikram Rikiason. On that day, she called the accused and the accused came and she voluntarily went with the accused at 8.30 PM. The accused took her to Aizawl. She further deposed that she stayed there with the accused for about one week and thereafter they returned to Silchar and stayed for one night in a hotel and on the next day, they went to Istampur Shiv bari and got married there. She further deposed that she stayed with the accused as his wife. She further deposed in her deposition that Udharbond police recovered her near Shiv Bari, Istampur and kept her in Ujala Home for two days and thereafter she was brought to Court where her statement U/S 164 Cr.P.C. was recorded. She further deposed that she was taken to SMCH for her medical examination but she refused to give consent for the same. She also deposed in her deposition that at the time of occurrence she was aged about 19 years.

She stated in her cross examination that the accused did not kidnap her and her father lodged the case as she went with the accused without informing him.

Spl.(POCSO) Case No.8/19

9. PW.2, Jugesh Goala, the informant of this case deposed in his evidence that on 03.01.2019 his victim daughter, in his absence went with the accused to Koltilla and as he did not find his daughter at home lodged an FIR vide Ext. 2. Later on, police recovered his daughter and brought her to Court where her statement U/S 164 Cr.P.C. was recorded. He further depos+

ed in his evidence that at the time of occurrence, the age of his daughter was above 18 years.

In his cross examination PW.2 stated that his victim daughter reported him after her recovery that she voluntarily went with the accused. PW.2 also came to know that victim had love affairs with the accused. After the release of the accused from jail they gave the victim in marriage with the accused. He also stated that presently his victim daughter is living with the accused as his wife and PW.2 do not have any grievances against the accused.

- 10. So, from the evidence of prime witnesses i.e. the victim PW.1 and the informant PW.2, it reveals they did not at all implicate the accused in the alleged offence of crime. Rather it is cropped up from the evidences in its entirety, that when the victim was major out of love affairs, voluntarily went with the accused and subsequently her father i.e. the informant gave her marriage with the accused socially and at present victim has been living with the accused as his wife.
- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366 of IPC and Sec. 4 of POCSO Act against accused.

Spl.(POCSO) Case No.8/19

12. In view of the above, accused person is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 14th day of February, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge, Special Judge,

Cachar, Silchar. Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 8 of 2019.

APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 – Victim

P.W. 2 – Jugesh Goala.

(B) <u>DEFENCE WITNESSES</u>: - NIL

(C) PROSECUTION EXHIBITS: -

Ext. 1 — statement of victim

Ext. - FIR.

- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.