IN THE COURT OF SESSIONS JUDGE CUM SPECIAL JUDGE, SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Special (P) Case No. 15 of 2017 U/S 366 IPC and Sec. 4 of POCSO Act. (Arising out of Namtola P.S. Case No. 47/2014)

State of Assam

-Vs-

Sri Dharmeswar Bhuyan Accused

APPEARANCE:

For the prosecution : Sri A. K. Bora, P. P.

For the accused : Sri M. Goduka, Advocate

Date of framing Charge : 28.03.2017
Dates of Evidence : 20.06.2017
Date of Argument : 20.06.2017
Date of Judgment : 20.06.2017

JUDGMENT

- 1. Prosecution case, in brief, is that on 05.09.2014, Sri Rajesh Churi lodged an FIR with O/C, Namtola Police Station alleging, inter alia, that on 02.09.2014, at about 10.00 a.m. his minor daughter victim 'X' (name withheld) went to nearby nursery, but did not return home. During search, they came to know that accused Dharmeswar Bhuyan has kidnapped the victim 'X'.
- 2. On receipt of the FIR, Namtola P.S. Case No. 47/2014, U/S 366 (A) IPC was registered. During investigation, victim was recovered and she was medically examined and got her statement recorded in Court U/S 164

- Cr.P.C. Accused was arrested and forwarded to court for judicial custody. On completion of investigation, submitted Charge-Sheet against the above named accused U/S 366 (A) of IPC.
- Upon submission of Charge-Sheet, due to non-appearance on summon, learned. Committing court has to issue W/A and on 17.02.2017, accused was arrested and remanded to jail custody. Vide order dated 20.02.2017, learned Sub-Divisional Judicial Magistrate, Charaideo, Sonari, by complying the provision of Section 207 Cr.P.C. has committed the case for trial before the court of Sessions with the accused in Jail custody.
- 4. On receipt of the record for trial, case (Sessions Case No. 42(S-C)/2017 was registered and transferred to the Court of Addl. Sessions Judge, Circuit Bench at Sonari for disposal. Vide order dated 01.03.2007, the accused was allowed to go on bail. Vide order dated 15.03.2017, Learned. Addl. Sessions Judge has formed an opinion that there were ingredients of trial under Pocso Act and referred this case for trial before Special Judge, Sivasagar.
- Accordingly the instant case was registered as Spl. (P) Case No. 15/2017. On appearance of the accused before this court, and after hearing both the sides, vide order dated 28.03.2017, charge U/S 366 IPC and Section 4 of POCSO Act were framed against the above named accused to which he pleaded not guilty and claimed to stand trial.
- During trial, prosecution has examined only two witnesses i.e. informant Sri Rajesh Churi as P.W. 1 and victim 'X' as P.W. 2. Considering the nature of the evidence of PW 1 and 2, examination of accused U/S 313 Cr.P.C. is dispensed with as no incriminating material found against the accused. Accused declined to adduce evidence in defence.
- 7. I have heard argument of learned P.P. Mr. A.K. Bora and Mr. Mohesh Goduka, learned defence counsel, and gone through the evidence and documents. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE -

- 8. (I) Whether on 02.09.2014, at about 10.00 AM accused kidnapped/abducted the victim 'X'?
 - (II) If so, what was the intention of the accused behind such kidnap/abduction?
 - (III) Whether on 02.09.2014 or thereafter, the victim 'X' was subjected to penetrative sexual assault by the accused?

DECISION AND REASONS THEREOF

- 9. P.W. 1 Sri Rajesh Churi, the informant and the father of the victim 'X' in his evidence deposed that about three years back, due to her love affairs, victim flew away with the accused. On her missing, he lodged the FIR. Exbt.1 is the said FIR. P.W. 1 further deposed that at the relevant time victim was aged about 18 years. After their recovery, he learnt that his daughter on her own will entered into marriage with the accused and presently they are living peaceful conjugal life. One child was begotten to his daughter. In cross by defence he stated that he is not willing to proceed further with this case by adducing evidence and accused may kindly be acquitted.
- 10. P.W. 2 is the victim 'X' in her evidence deposed that about three years back, having love affairs with the accused she flew away with him and performed marriage and lived at Sivasagar for about 10 days. On her missing, her father lodged the FIR. On knowing about the case, they appeared at the Namtola Police Station. Police got her medically examined. She was taken to Court where she gave her statement vide Exbt. 2. At the relevant time, she was aged about 18 years. Presently they are living peaceful conjugal life. One child was begotten to her. In cross by defence she stated that she is not willing to proceed further with this case by adducing evidence and accused may kindly be acquitted.
- 11. From the evidence of P.W. 1 and P.W. 2 it is seen that at the relevant time victim was major in age. Victim has categorically admitted that due to her affair, she eloped with the accused on her own, lived with the Spl. (P) Case No.15/2017

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accused for ten days at Sivasagar and performed marriage with him. Presently they are living peaceful conjugal life and in their wedlock, one child was born. From her cross examination, it appears that she is not willing to proceed further with this case and prayed for acquittal of the accused. P.W. 1 being the father of the victim and informant has also stated that now he is not willing to proceed further with this case by adducing more evidence. From the evidence of P.W. 1 and P.W. 2 it appears that the ingredients of abduction or penetrative sexual assault are missing.

- 12. Considering all above, I am of the opinion that prosecution has failed to prove the charge U/S 366 IPC and Section 4 of POCSO Act, or any other minor offences against the accused. As such, accused Dharmeswar Bhuyan is acquitted from the charge U/S 366 IPC and Section 4 of POCSO Act, 2012 and set at liberty forthwith.
- 13. Bail bonds executed by the accused and his surety stand extended for another six months from today.
- 14. Considering the fact and circumstances of the case, the matter is not referred to DLSA for granting compensation U/S 357 A Cr.P.C.
- 15. Send a copy of the judgment to learned District Magistrate, Charaideo at Sonari U/S 365 Cr.P.C.
- 16. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 20th day of June 2017 at Sivasagar.

Special Judge, Sivasagar:

<u>APPENDIX</u>

- 1. <u>Prosecution witnesses</u>:
 - P.W.1 Sri Rajesh Churi (informant)
 - P.W.2 Victim X
- 2. <u>Defence witnesses</u> Nil.
- 3. Court witnesses -
- 4. Exhibits by prosecution -
 - Exbt. 1 FIR
 - Exbt. 2 164 Cr.P.C. statement of the victim.

Special Judge, Sivasagar: