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IN THE COURT OF SESSIONS JUDGE DARRANG, MANGALDAI.

Spl(POCSO) case No.6 of 2016

(U/S:363/366/342 IPC R/W Section 4 of POCSO Act).

State
Versus
Sri Chayanmoni Das
S/O: Sri Ananda Das
Village- Upar Kurua
PS-Sipajhar, Dist-Darrang(Assan)
--Accused.

PRESENT: Sri P.K. Bora, A.J.S., Sessions Judge. Darrang, Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma.

AND

Learned advocate for the accused :Mr. Baharul Islam.

Evidence recorded on :22/12/16, 11/01/17, 13/02/2017,

09/03/17, 10/07/2017 & 21/01/19.

Argument heard on : 08/03/2019

Judgment delivered on: 20/03/2019.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 17/07/2016 the O/C of Sipajhar Police Station received an FIR lodged by one Shri Krishna Saikia to that effect that on 08/03/2016 at about 9 a.m. her 15 year old daughter Shri Himakshi Saikia was kidnapped by accused Chayanmani Das, who also kept the kidnapped girl in some unknown place and her daughter was raped.
- 2. Having received the ejahar, Police registered a case, investigated the matter. During investigation, Police got the statement of the victim girl recorded U/S 164 Cr.P.C. by the Court. Police also got the victim girl medically examined by Dr. S. Kurmi, Medical Officer, Sipajhar PHC and finally Police submitted charge sheet against the accused Sayanmoni Das U/S 366(A)/34 I.P.C. read with Section 4 of POCSO Act.
- 3. As the offence against the accused is triable by the Court of Sessions, the Court of learned Magistrate before whom the charge sheet was filed, committed the case to this Court. On his appearance the written charges U/S 342/363/366 I.P.C. read with Section 4 of POCSO Act were explained and read over to the accused to which he pleaded not guilty.

4. Point for determination:

- (i)Whether the accused on 08/03/2016 at 9 a.m. the victim Himakshi Saikia was kidnapped by the accused from her legal guardianship?
- (ii)Whether Himakshi Saikia was kidnapped by the accused for the purpose of sexual intercourse?
- (iii)Whether the accused committed penetrative sexual assault to victim Himakshi Saikia while she was wrongfully confined?

REASON AND DECISIONS THEREON:

5. In the course of trial, the prosecution examined PW1 Smti. Krishna Saikia, PW2 (victim) Himakshi Saikia, PW3 Smti. Manika Bhuyan, PW4 Tapan Das, PW5

Baikuntha Saikia, PW6 Dulal Ch. Medhi, PW7 Khitish Deka and PW7 Dr.Mrs. Sudha Kurmi.

- 6. The informant (PW1) Smti. Krishna Saikia states in her evidence that her daughter Himakshi Saikia had love affair with the accused and one day her daughter disappeared from her house. After 15 days she lodged FIR against the accused on suspicion. She lodged the FIR as she was angry with the accused and at that time the age of her daughter Himakshi was 15 years and she appeared H.S.L.C. Examination.
- 7. PW2 Himakshi Saikia in her examination-in-chief stated her age as 16 years at the time of the incident and in cross-examination she contradicted her own version and stated that at that time she was 18 years. In her evidence she categorically stated that on 08/03/16 she had eloped with Chayanmoni Das and went to Nagaon and stayed there for 10 days and during their stay at Nagaon she was called to attend State Commission for Protection of Children situated at Six Mile, Guwahati. Police brought both she and the accused to the Police Station from Six Mile. She states that she had 4 years old affair with the accused.
- 8. PW3 Smti. Manika Bhuyan knows both the accused and the victim, but she was not aware of the incident of elopement by them.
- 9. PW4 Tapan Das is also a reported witness and he was aware of love affair between them and he heard about the incident.
- 10. PW5 Baikuntha Saikia states that her daughter Himakshi Saikia had eloped with the accused and her daughter was called by Sishu Kalyan Parishad, Guwahati and Police recovered victim from the Office of Sishu Kalyan Parishad, Guwahati.
- 11. PW6 Dulal Ch, Medhi states inter alia that Police recovered the victim girl from the house of the accused.

- 12. PW7 Khitish Deka was entrusted with the investigation of this case. He recovered the victim girl and her statement was recorded in the court and she was also medically examined.
- 13. PW8 Dr. Mrs. Sudha Kurmi examined Himakshi Saikia medically and found her age between 16/17 years from the radio logical examination and no injury was found on her body and vaginal swab examination shows negative of spermatozoa and urine test also negative of pregnancy.
- 14. The accused person denied indictment . It is not in dispute that the victim and the accused had love affair and both of them absconded. Thereafter, PW1 Krishna Saikia filed an FIR against the accused. PW1 Krishna Saika states in her evidence that her daughter Himakshi Saikia had appeared before the HSLC Examination, but the Admit Card or the certificate of Himakshi Saikia has not been produced before this Court to prove her age at the time of the incident. The oral evidence of the victim so far her age is concerned is self contradictory. As per the evidence of PW8 Dr.Mrs Sudha Karmi the radio logical report shows that at the time of the incident Himakshi Saikia was 16/17 years. She is not suffering from any physical or mental disability. At that time she was of such an age when a girl knows what is right or what is wrong. Therefore, she has attained maturity to take decision. In such an age, it can hardly be believed that a girl can be influenced to do something on persuasion against her will.
- 15. It was held in S. Varadarazan V. State of Madras reported in A.I.R. 1965 SC 942 that she was not a child of tender age who was unable to think of herself, but as already stated, she was on the verge after attaining majority and capable of knowing what was bad for her. She was no uneducated or unsophisticated village girl, but a senior college student, who had probably all her life lived in a modern city and was thus far more capable of thinking for herself and acting on her own then perhaps an latered girl hailing from a rural area. Therefore, in absence of reliable evidence regarding the age of the victim girl to convict an accused for

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committing an offence of kidnapping of a girl from a legal guardianship some

other factors are to be considered. Out of which the capacity to know the

consequence of the leaving the house of the guardian of the victim girl with the

accused is important. Moreover, in our case it has not come from the mouth of the

victim(PW2) Himakshi Saikia that she was physically assaulted by the accused

when she was at the disposal of the accused. Thus, the alleged offences against

the accused are not proved.

16. Considering the above, the accused Chayanmoni Das is acquitted and set at

liberty forthwith.

17. However, the bail bond of the accused shall remain in force for 6(six) months U/S

437(A) Cr.P.C.

(P.K. Bora) Sessions Judge, Darrang, Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

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APPENDIX:

A)Prosecution witnesses:

i)PW1 Smti. Krishna Saikia ii)PW2 Miss Himakshi Saikia iii)PW3 Smti. Manika Bhuyan iv)PW4 Sri Tapan Das v)PW5 Sri Baikuntha Saikia vi)PW6 Sri Dulal Ch. Medhi vii)PW7 Sri Khitish Deka v)PW8 Dr,Mrs. Sudha Kurmi

B) Defense witness: Nil.

C)Exhibits:

i)Ext.1FIRii)Ext.2 statement of victimiii)Ext.3 sketch mapiv)Ext.4 charge sheet.v)Ext.5 medical report.

Sessions Judge, Darrang, Mangaldai.