

#### **DISTRICT- CHARAIDEO.**

IN THE COURT OF THE SPECIAL JUDGE: CHARAIDEO: SONARI

Present:-

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Syed Imdadur Rahman, AJS.

**SPECIAL JUDGE** 

The 14<sup>th</sup> day of November, 2018.

SPECIAL (P) CASE NO: 63 OF 2017

Under Section

4 of the Protection of Children
from Sexual offences Act, 2012.

Read With

366 of the Indian Penal Code.

State of Assam

-Versus-

1. Sri Sunil Karmakar.

..... Accused Person.

F.I.R was lodged on :::::::::: 05.06.2017.

Charge framed on ::::::::: 23.03.2018.

Argument Heard on ::::::::: 14.11.2018.

Judgment Delivered on ::::::::: 14.11.2018.

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### JUDGMENT

In this case the accused person is facing trial under section 4 of the P.O.C.S.O act 2012, and alternatively Under Section 366 I.P.C

- 1. The case of the prosecution is that, the accused kidnapped the minor daughter of the informant, i.e. (N.G) who was 13/14 years old and was student of class IX, on 03/06/17 at 4:00 P.M.
- 2. That, after this incident, the informant filed an ejahar before the Sepon Police outpost. Later on a case was registered in this regard, before the Moranhat Police station, bearing its P.S case no 36/17. Police after investigation forwarded chare sheet u/s 366(A) I.P.C against the accused person. Thereafter, case was committed and charge U/S 4 POCSO act 2012 read with 366 I.P.C was framed against the accused person, by my Ld. Predecessor in office. The charge was read over and explained to the accused person, who, pleaded not guilty and claimed to be tried. Prosecution examined 3 witnesses.
- 3. The accused person was examined U/S 313 Cr.p.c, where he denied the case of the prosecution. The accused person examined no witness. I have heard arguments put forwarded by both sides.

# 4. <u>Points For Determination in this case are:</u>

i) Whether the accused on 03/06/2017, kidnapped the daughter of the informant with the intention that, she may be compelled to marry

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any person against her will, or she may be forced to have illicit intercourse with another person?

**ii)** Whether the accused on 03/06/2017, committed penetrative sexual assault on the daughter of the informant Sri Bishnu Ghasi, who was below 18 years at that time?

# 5. <u>DISCUSSION DECISION AND REASONS FOR THE DECISION</u>

Let us now, discuss evidences on record, concerning the points for determination of this case. In this case the alleged victim was examined as P.W3, the P.W3 in her evidence deposed that, accused is her husband. That, her present age is 19 years. That, having love affair with accused for 2 year, on 3/6/17 she went to the house of the aunt of the accused, to meet him and stayed there for one night. That, after 2 days on the assurance of acknowledging their relation, as given by her father, they both appeared before Sepon Police station, from where the accused was arrested by police. That, from court she went to her paternal house and after, staying there for 5/6 months, she again went to the accused and since then she is living together at the paternal house of the accused at Borbam area.

In the cross examination this P.W deposed that, accused did not put force on her for going or staying with him. That, she on her own went with the accused. That, accused is innocent.

I have considered the evidence of the alleged victim. The alleged victim in her evidence deposed that she went on her own, with the accused, that, the accused is innocent. The evidence of the alleged victim clearly demolishes any hypothesis that accused kidnapped or used force to the alleged victim to go with him, or caused any sexual assault on her.

Special Judge evidence deposed that, he knows the accused. That, victim is his daughter. That,



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she is presently aged about 15 years. That, on the day of incident his daughter was reading in Sepon High school. That, 03/06/17 his daughter got missing from his house. That, during search he came to know that, accused has kidnapped his daughter. That, after filing of the case, his daughter and the accused appeared before Police station. That, on asking his daughter, she told that, having love affair with the accused, she eloped with the accused. That, after staying in his house for about 5/6 months, again on 17/11/17 his daughter eloped with the accused. In the cross examination this P.W deposed that, his daughter told that she went to the accused on her own.

7. The P.W3 i.e. the mother of the alleged victim in evidence deposed that, That, victim is her daughter. That, she is presently aged about 15 years. That, on the day of incident her daughter was reading in Sepon High school. That, 03/06/17 her daughter got missing from his house. That, during search she came to know that, accused has kidnapped her daughter. That, after filing of the case, her daughter and the accused appeared before Police station. That, on asking her daughter, she told that, having love affair with the accused, she eloped with the accused. That, after staying in their house for about 5/6 months, again on 17/11/17 her daughter eloped with the accused. In the cross examination this P.W deposed that, her daughter told that she went to the accused on her own.

I have considered the evidence of the P.W1/informant/father of the victim and the P.W3/mother of the victim. These 2 P.Ws were informed by the victim that, out of love affair, she went with the accused on her own. Through the evidence the informant and the P.W3 as witness failed to place any specific evidence concerning any of the point for determination, rather it is yielded from there evidence that the victim told him that she went with the accused on her own.

8. I have considered evidences of the P.W1,P.W2 and P.W3 and found that, Special Judge they never adduced any evidence from which it can be gathered that accused Charaideo, Sonari



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kidnapped or used force to the alleged victim go with him. Concerning the sections 366 I.P.C, or section 4 of the POSCO act 2012, here in this case there is nothing, yielded from the material witnesses. The alleged victim, her parent never deposed anything connecting any of the point for determination.

- 9. I have considered the evidences on record, which includes the evidence of the prosecutrix and I find that, there is no iota of evidence to bring the accused person within the ambit of section 366 of I.P.C or section 4 of the POCSO act, as the alleged victim and other witness never deposed anything in evidence against the accused, concerning any of the points for determination. Here in this case the prosecution has failed to adduce any evidence basing on which we can held that, prosecution has proved the case beyond all reasonable doubt.
- 10. This being the position of this case, in opinion of this court, prosecution has failed to prove the case against the accused person and accordingly the accused Sri Sunil Karmakar is acquitted from the offences he is facing trial. He is set at liberty forth with. Bail bond executed by the accused is extended as per provision 437(A) Cr.P.C. In opinion of this court there is no circumstance to invoke section 357(A) of Cr.P.C.

Given under my hand and seal of this court on this the 14th day of November 2018.

(S.I.Rahman)

Additional Sessions Judge. Charaideo, Sonari. Sonari



#### **Appendix**

## Prosecution Witnesses.

- Sl. 1---- Prosecution Witness 1 ---Shri Bishnu Ghasi.
- SI. 2---- Prosecution Witness 2 --- Alleged victim.
- SI. 3---- Prosecution Witness 3 --- Smti Sanja Ghasi.

## Prosecution Exhibits.

- Sl. 1---- Birth Certificate.
- Sl. 2---- F.I.R.
- SI. 2(i)- Signature of the informant.
- SI. 3---- Statement recorded under section 164 Cr.P.C
- SI. 3(i) and 3(ii) are signatures of the P.W2.

## Defence witness.

Nil.

Defence Exhibit.

Nil

(S.I.Rahman)

Additional Sessions Judge Charaideo.