IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE (SPECIAL JUDGE), CACHAR, SILCHAR.

SPL. (POCSO) Case No.15 of 2019.

Under Section 366 of IPC & Section 8 of POCSO Act

Present :- Smt. Angjeeta Mahanta, AJS,

Additional Sessions Judge (Special Judge),

Cachar, Silchar.

State of Assam ----- Complainant.

- Versus -

Aktarul Hussain @ Aktar Hussain----- Accused person.

Appearance :-

For the prosecution :- Smti. B. Acharjee, learned Special P.P.

For the defence :- Sri A.A. Laskar, learned counsel.

Dates of evidence :- 29.02.2020.

Argument heard on :- 29.02.2020.

Judgment delivered on :- 29.02.2020.

JUDGMENT

- 1. Prosecution case in brief is that on 03.03.2018, the informant lodged an FIR with the O/C of Udharbond P.S. stating inter alia that few days prior to lodging of the FIR, accused Aktar Hussain used to tease his victim daughter on the road and on 02.03.2018 at about 8 p.m. when the victim daughter of the informant went to attend her nature's call, the FIR named accused persons kidnapped the victim girl by gagging her mouth. On being search the informant could know that the accused persons kidnapped the victim.
- 2. Accordingly, O/C Udharbond P.S. registered Udharbond P.S. Case No. 53/2018 and investigation commenced. During the course of investigation the I.O. visited the place of occurrence, drew up a sketch map of the place of occurrence,

the victim was recovered and her statements were recorded u/s 164 Cr.P.C. The I.O. also examined the witnesses and also recorded their statement and on completion of investigation I/O submitted charge sheet against the present accused person U/s 366 IPC r/w section 4 of POCSO Act.

- 3. As the offence U/S 366 of IPC r/w Section 4 of POCSO Act being exclusively triable by the Special Court, Id. CJM Cachar, Silchar sent the case record to the Court of the learned Special Judge, Cachar, Silchar. In due course, upon appearance of the accused and after hearing both sides learned Special Judge framed formal charge U/S 366 of IPC and Section 8 of POCSO Act against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried. Subsequently, the case was transferred to this Court for disposal.
- 4. Prosecution examined 2 (two) witnesses i.e. the victim and the informant. Statements of the accused person were recorded u/s. 313 Cr.P.C. The accused denied the accusation of forcibly taking away the victim. Defence declined to adduce evidence.
- 5. I have gone through the entire evidence on record and have also heard argument of both the sides.

6. **Points for Determination**:-

- (i) Whether the accused person on 02.03.2018 at about 8 p.m. at Lathigram under Udharbond P.S. had kidnapped the victim, the daughter of the informant with intent that she may be compelled or knowing it to be likely that she will be compelled to marry against her will or in order that or knowing it to be likely that she will be forced or seduced to illicit intercourse, as alleged?
- (ii) Whether the accused person committed sexual assault upon the victim, as alleged?

DISCUSSION, DECISION AND REASONS THEREOF

- 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 is the victim. She deposed in her evidence that the informant is her father and the occurrence took place in the year 2018. She further deposed that at the time of occurrence her father out of suspicion lodged an FIR against the accused with the Udharbond P.S. and at that time she was in her grandmother's house and her father recovered her from the house of her grandmother at Saidpur and the police produced her before the Court for recording her statement U/S 164 Cr.P.C. She has proved Ext.1 as her statement U/S 164 Cr.P.C. wherein Ext.1(1) and 1(2) are her signatures. She further stated that police sent her to SMCH, Silchar for medical examination but she refused. She further stated that at the time of occurrence her age was 18 years.

In her cross-examination by the defence, the PW-1 stated that out of suspect of relationship with the accused her father used to scold her and so she voluntarily went to her grandmother's house. She further stated in her cross-examination that she was not eloped by anybody and that after about 4/5 months of the alleged incident she was given in marriage with the accused and now she is residing with the accused as his wife and having a 6 months old daughter out of the wedlock with the accused and she has no grievance against the accused.

9. PW-2 is the informant and father of the alleged victim of this case. He has deposed in his evidence that he lodged this case against the accused Aktar Hussain. He further deposed that in the last year during the Bengali month of 'Chaitra' the occurrence took place at night at about 8 p.m. and at that time the accused took away his victim daughter from his house. He further deposed that at that time his victim daughter went out of the house to attend her nature's call and then the accused from outside took her away forcibly by gagging her mouth.

Thereafter, he did not find the victim anywhere in his house and lodged the FIR with the Udharbond P.S. against the accused. He further deposed that the father of the accused produced his victim daughter to Udharbond P.S. after one day of the occurrence and police sent the victim to SMCH, Silchar for her medical examination but the victim refused to be medically examined. He further deposed that police got her statement recorded by the Magistrate U/S 164 Cr.P.C. He further deposed that at the time of occurrence the victim girl was a student of Class-VIII and her age was about 17 years 3 months.

In his cross-examination by the defence, the PW-2 admitted that he had not seen when and how his daughter got missing and that he demanded some land on Kabinnama from the accused side and as the accused side could not fulfill his said demand he filed this case. He denied the defence suggestion that his daughter was not a student of Class-VIII and that she was major at that time.

- 10. From the above evidence it is apparent that the alleged victim was about 18 years at the time of occurrence as is evident from her examination-in-chief as well as from Ext.1 statement. Though the PW-2 has stated that the victim girl was aged about 17 years 3 months at the time of occurrence but the same has not been proved by way of any documentary or medical evidence. Moreover, the PW-2 has admitted in his cross-examination that he has filed this case as the accused side could not fulfill his demand of land. In view of the categorical statement of the alleged victim herself that she was not eloped by anybody, there is no scope to infer that the accused used any sort of force in order to take the alleged victim. Further, there is no indication whatsoever in the evidence on record regarding any sort of deceitful inducement having been used by the accused in order to make the alleged victim to go with him. Though the father of the victim i.e. PW-2 deposed in his evidence that the accused took away the victim forcibly by gagging her mouth, the same cannot be believed as the victim i.e. PW-1 admitted in her cross-examination that she was not eloped by anybody.
- 11. From the above discussion, there is no indication that the alleged victim was kidnapped by the accused person and that she was sexually assaulted by the

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accused. On consideration of the evidence on record, I am unable to hold that there is sufficient evidence before the Court to return a finding of guilt against the accused person and the points are therefore answered accordingly.

- 12. In view of the aforesaid evidence discussed, I hold that the charge against the accused person is not established. The prosecution has failed to prove its case beyond reasonable doubt. Consequently, the accused is acquitted of the offences u/s.366 I.P.C. read with Section 8 of the POCSO Act. He be set at liberty forthwith.
- 13. The Bail bond shall remain in force for a further period of six months from today in view of Section 437A Cr.P.C.

Given under my hand and seal of this Court on this the 29^{st} day of February, 2020.

Additional Sessions Judge (Special Judge), Cachar, Silchar.

Dictated & corrected by me.

Additional Sessions Judge (Special Judge), Cachar, Silchar.

Dictation taken & transcribed by Sujit Kr. Das.

IN THE COURT OF ADDL. SESSIONS JUDGE (SPECIAL JUDGE), CACHAR, SILCHAR

Spl. (POCSO) Case No. 15 of 2019. APPENDIX

(A) <u>PROSECUTION WITNESSES:</u> PW-1 — The victim girl.

PW-2 – The informant.

- (B) DEFENCE WITNESSES: NIL
- (C) PROSECUTION EXHIBITS: -

Ext.1 — Statement of the victim girl recorded U/S 164 Cr.P.C.

- (D) DEFENCE EXHIBITS: NIL.
- (E) COURT EXHIBITS: NIL
- (F) EXHIBITS PRODUCED BY WITNESSES: NIL.

Additional Sessions Judge (Special Judge), Cachar, Silchar.