Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge,

Cachar, Silchar.

Spl(POCSO) Case No. 32 / 2019 u/s 366/342 IPC r/w sec.10 of the POCSO Act The State of Assam

-Versus-

Salim Uddin

..... accused person

Dates of evidence: 13.12.19

Date of argument: 13.12.19

Date of judgment : 13.12.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. A.H.Laskar, Ld. Advocate

J U D G M E N T

1. The brief facts of the prosecution case is that the informant Moina Mia lodged an ejahar dated 14.5.18 stating that on 30.4.18 at

about 2 pm the the accused kidnapped the minor daughter of the informant i.e. the victim and confined her some where and thereafter on 31.5.18 the daughter of the informant came back to her house and told the informant that the accused person had sexually assaulted her.

- 2. Accordingly, on receipt of the ejehar, police registered a case being Silchar P.S Case No.88/18 u/s 366(A)/342/506 of the IPC. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 366(A)/342 of the IPC r/w sec. 7 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court . Thereafter, on 4.7.19 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Salim Uddin has appeared before this court and on 26.9.19 after hearing the prosecution and the defence counsel, this court was pleased to frame charges u/s 366/342 of the IPC r/w sec. 10 of the POCSO Act against the accused person and its particular was read over and explained to him to which the accused pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced , during which the prosecution examined the informant and the victim of the case as the P.W.1 & the P.W.2. The Ld. Spl.P.P has submitted that the prosecution evidence may be closed as the informant and the victim have not supported the case of the prosecution. In view of the evidence of the P.W.1 & 2 , the statement of the accused person u/s

- 313 of the Cr.P.C is dispensed with as both the witnesses have failed to implicate the accused person with the alleged offence.
- 5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

6. **Point for determination:-**

- (i)Whether on or about the 30.4.18 at about 2 pm at Boalibaasti under Lakhipur P.S the accused person kidnapped the victim, i.e. the minor daughter of the informant with intent that she would be compelled to marry her against her will or in order that she would be forced or seduced with illicit intercourse or knowing it likely that she would be forced or seduced to illicit intercourse, as alleged?
- (ii)That on the same date , time and place the accused person wrongfully confined the victim in his house, as alleged ?
- (iii)Whether on the same date, time and place the accused person committed aggravated sexual assault upon the victim, as alleged?

Discussion, **Decision** and **Reasons** Thereof:-

- 7. In this case the prosecution side examined only the informant and the victim of the case as the P.W.1 and the P.W.2.
- 8. The P.W.1 is the victim of the case and she deposed that the informant is her father. She further added that the occurrence took place about a year ago at about 10 am. She also stated that her parents scolded her and accordingly she went to the house of the accused Salim Uddin who is her cousin brother and after 3/4 days

she came back to her house and came to know that her father lodged an FIR . She also stated that police medically examined her and she was also brought to court for recording her statement u/s 164 of the Cr.P.C. The said statement u/s 164 of the Cr.P.C is brought on record as the Ext.1. She stated that at the time of occurrence she was a student of Class VII.

During cross-examination the P.W.1 stated that presently her age is 20 years and at the time of occurrence she was 19 years old. The P.W.1 also admitted that she could not say what she deposed during her statement u/s 164 of the Cr.P.C nor she could say what she had stated before the doctor at the time of her examination. The P.W.1 also stated that the accused never kidnapped her not he did any physical relationship with her.

9. The P.W.2 Moina Mia, the informant of the case. In his deposition he stated that about a year ago he had scolded his daughter i.e. the victim and she left the house and went to the house of accused and after 4/5 days she came back and then he lodged the FIR against the accused, who is the son of his (informant's) brother in law. The FIR is brought on record as the Ext.2

During cross-examination the P.W.2 admitted that he does not know the contents of the FIR and that the said FIR was filed by him due to misunderstanding of facts . The P.W.2 also stated that he has no grievances against the accused.

10. Appreciating the materials on record, it is found that though the informant P.W.2 alleged that the accused had kidnapped his daughter but during his deposition before the court had failed to support the said version. The victim P.W.1 has also failed to implicate the accused person with the alleged offence. She has stated that as her parents had scolded her so she went to the house of the accused , who is her cousin brother . The victim during her cross-examination has stated that her age was 19 years at the time of occurrence. She also admitted that the accused did not commit any sexual assault upon her during her stay in the house of the accused.

- 11. In view of the above position, I am of the opinion that the prosecution side failed to prove that the victim is below 18 years of age at the time of occurrence. That apart, neither the victim nor the informant have implicated the accused person in respect of the offence charged against the accused person i.e. the offence u/s 366/342 of the IPC r/w sec.10 of the POCSO Act.
- 12. It is the bounden duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt .
- 13. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

ORDER

14. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 366/342 of the IPC r/w sec.10 of the POCSO Act against the accused person

present today beyond reasonable doubt. As a result the accused person namely, Salim Uddin is acquitted and set at liberty.

Set my hand and seal of this case on the 13^{th} day of December, 2019.

(Mr.D.Ullah),

Special Judge, Cachar, Silchar.

Dictated & corrected by me;

Special Judge, Cachar, Silchar.

Contd.....p/7

APPENDIX

A.Prosecution Witnesses:-

P.W.1-victim

P.W.2-Moyna Mia Laskar

B.Prosecution Exhibits:-

Ext.1-statement u/s 164 of the Cr.P.C

Ext.2-FIR

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah), Special Judge, Cachar, Silchar.