Before The Special Sessions Judge, Cachar at Silchar.

Present: Dr. M. Baruah, A.J.S

Spl. Judge,

Cachar, Silchar.

Special (POCSO) Case No. 25 / 2018 u/s 366(A)/34 of IPC r/w Sec.4 of the POCSO Act. The State of Assam

-Versus-

1. Bahar Uddin Mazumder

2. Siparul Haque Mazumder

.....accused persons.

Date of evidence: 10.8.18

Date of argument: 24.8.18.

Date of judgment: 6.9.18.

Appearance:-

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

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

JUDGMENT

- 1. The brief facts of the prosecution case is that the complainant Ashbarun Nessa lodge an ejahar before the O.C., Jirighat P.S against the present accused persons alleging that on 14.10.16 at night the accused No.1- Siparul Haque Mazumder came to the house of the informant and in the late night the FIR named accused persons kidnapped/abducted her minor daughter (referred as Victim) and the accused person committed rape upon the victim and hence this case was filed.
- 2. On receipt of complaint, the police registered a case being Jirighat P.S Case No. 64/16 u/s 366(A)/34 of the IPC. After the investigation was completed, a charge sheet was filed against the present accused person namely, Bahar Uddin Mazumder u/s 366(A) of the IPC and u/s 366(A)/ of the IPC r/w sec.4 of the POCSO Act against accused Siparul Haque Mazumder showing him as an absconder. The other FIR named accused person namely, Nur Ahmed Laskar is not sent up to face the trial.
- 3. The Ld. C J M, Silchar. Cachar committed the case to the Court of Hon'ble Sessions Judge, Silchar and thereafter this case was transferred to this Court for disposal. The accused persons appeared before this Court. After hearing the prosecution and the

defense counsel, charges u/s 366(A)/34 of the IPC was framed against accused Bahar Uddin Mazumder and charges u/s 366(A)/34 of the IPC r/w Sec. 4 of the POCSO Act against accused Siparul Hoauq Mazumder and the contents of the respective charges were read over and explained to the accused persons to which the accused pleaded not guilty and claimed to be tried.

4. During trial the prosecution examined two witnesses i.e. the informant and the victim of this case (i.e. the P.W.1 & the P.W.2) and in view of the evidence of the aforesaid witnesses the statement of accused persons u/s 313 of Cr. P.C are dispensed with as nothing incriminating materials against the accused persons has come out in their evidence. Heard argument of Ld. Spl. P. P and the defense counsel and perused the materials on record.

5. **Points for determination**

(i) Whether on or about the 14.10.16 at night at Diglang(Forest village) under Jirighat P.S the accused persons kidnapped/abducted 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 any person against her will or in order that she may be forced or seduced to illicit intercourse, as alleged?

(ii) Whether on the same date, time and place the accused person namely, Siparul Hoauq Mazumder committed rape upon the victim, as alleged?

DISCUSSION, DECISION AND REASONS:-

- 6. In this case the Prosecution examined only two witnesses i.e. the victim and the informant of this case .
- 7. The victim Musstt. Abjana Begum @ Bappi as the P.W.1 and she has stated that she was having love affair with the accused Siparul Haque since 4-5 years ago prior to the occurrence of the incident. About two years ago she eloped with the accused for which her mother lodged the ejahar after about 5 days she returned home. She further stated that she studied up to Class-III and dropped out from school about 10 years ago from the date of occurrence and presently she got married with the accused and stayed with him as his wife. During cross-examination she stated that out of misunderstanding her mother lodged the ejahar and she was 21 years of age. She denied that the accused had forcibly kidnapped her and raped her.
- 8. The informant- Asmarun Nessa deposed as the P.W.2 . In her evidence she stated that about 2 years ago her daughter i.e. the victim was missing from her house and after about 15-16 days she came to know that her daughter was staying with the acused in his house. Her daughter was recovered by the police. She

further stated that her daughter was studying in Class-IV and discontinued her study about 10-12 years ago. During cross-examination she stated that the age of her daughter was 21 years at the time of occurrence and accused did not kidnap or commit rape on her daughter.

- 9. Thus, from the evidence of victim and the informant, it is found that none of them implicated the accused persons for the offence of kidnapping or committing rape upon the victim. The police did not collect the birth certificate of the victim from the school. Since, there is no exclusive proof of age of the victim, therefore, she cannot be considered as a minor at the time of alleged occurrence. On the other hand, the victim herself and the informant i.e. her mother stated that the victim was 21 years of age at the time of occurrence. The victim admitted to have had love affairs with the accused Siparul Haque. There is no evidence of kidnapping or having forceful sexual relation with the victim.
- 10. In view of the discussion made above, I found that the prosecution side failed to prove the alleged offence u/s 366(A)/34 of the IPC r/w sec. 4 of the POCSO Act against the accused persons beyond reasonable doubt.

ORDER

11. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s

366(A)/34 of the IPC r/w sec. 4 of the POCSO Act against the accused persons beyond reasonable doubt. As a result, the accused persons namely, Bahar Uddin Mazumder and Siparul Haque Mazumder are acquitted and set them at liberty forthwith.

12. The bail bonds of the aforesaid accused persons shall remain in force for the next six months.

Set my hand and seal of this case on the 6^{th} day of Sept/ 2018.

(Dr. M Baruah),

Special Judge, Cachar, Silchar.

Dictated & corrected by me;

Special Judge, Cachar, Silchar

Transcribed by-Sahid Ahmed Laskar, Stenographer