IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 41 OF 2017

Under Section 366 IPC R/W Section 4 of P.O.C.S.O. Act,2012

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.
-versusMd. Safiqul Islam Accused.

APPEARANCE

For the Prosecution : Sri Lalit Ch. Nath, learned P.P.

For the accused : Sahjahan Ali, learned Advocate.

Evidence recorded on : 12.04.2018,03.05.2018,

Argument heard on : 13.06.2018,

Judgment delivered on : 22.06.2018.

<u>J U D G M E N T</u>

- 1. The prosecution case, in brief, is that on 04.12.2015 at about 4:15 PM while Kamela Khatun, aged about 14 years, daughter of Kamaluddin, was returning home from school, accused Safiqul Islam kidnapped her from the road in front of the house of one Kajimuddin. Accordingly one Nalu Mia lodged the FIR on 12.12.2015.
- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge

sheet against accused Safiqul Islam under section 366A IPC R/W section 4 of POCSO Act.

- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against accused Safiqul Islam under section 366 IPC R/W section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 4 (four) witnesses including the medical officer and the victim. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Point for determination**:-

Whether on 04-12-2015 at about 4:15 PM at Tapajuli Pathar, within the jurisdiction of Kalgachia Police Station, District Barpeta, kidnapped Kamala Khatun, aged about 14 years, niece of the informant Nalu Mia, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and committed penetrative sexual assault on Kamala Khatun?

Discussion, decision and reasons thereof

- 6. The victim was examined by Medical Officer on 14.12.2015. The Medical Officer is examined **as PW2.** She has opined that "(1) There is no recent sign of sexual intercourse but victim is accustomed to sexual intercourse. (2) There is no violence marks on her body. (3) According to X-ray report her age is above fourteen(14) years and below Sixteen(16) years at present."
- 7. The said victim Kamela Khatun is examined as PW1. She has mentioned her age as 21 years. She has deposed that the occurrence took

place 2/3 years ago. After appearing in the examination, she had gone to her maternal aunt's house. But she did not inform at home. She stayed in the house of maternal aunt's at night. As she had terms with the accused Safique, her paternal uncle lodged the FIR out of suspicion. Later on, she returned home at her own will. She reported the matter at home. As her paternal uncle has already lodged the FIR, police produced her before the Magistrate for recording her statement and also before the medical officer for examination.

In cross examination, she has stated that accused SafiquI did not take her forcefully. He did not do any illicit act with her. She made the statement before the Magistrate as tutored by her parents. After two days of this alleged occurrence, she got married with another boy and out of their wedlock a child is born.

8. The informant **Nalu Mia as PW3** has deposed that about 2/2½ years ago one day, the victim did not return home from the school. At that time, she was aged about 15/16 years. So, out suspicion, he lodged the FIR. Later on, she was recovered in the house of a villager.

In cross examination, he has stated that he could not say the exact age of the victim at the time of occurrence. After some days, they performed the marriage of the victim.

9. **Kamal Uddin, the father of the victim, as PW4** has deposed that about 2/2½ years ago one day, the victim did not return home from school. Later on he heard that somebody kidnapped the victim. He does not know what was the age of the victim at the time of occurrence. He even does not know in which class, she was reading. Later on she was recovered in their village. Police took her to the police station.

In cross examination, he has stated that he does not know who had taken the victim.

10. From the above discussions of the evidences of the prosecution witnesses, it is found that except the victim, none of the prosecution witness had personal knowledge about the occurrence. They

were not present at the time of occurrence. The informant has stated that he lodged the FIR out of suspicion. The victim has not supported the prosecution case. According to the victim, on the day of occurrence, she had gone to her maternal aunt's house from the school. She stayed there at night. But she did not inform at home. As she had a relation with accused Safiqul, her paternal uncle lodged the FIR out of suspicion. But the accused person did not take her forcefully and also did not do any illicit act with her.

- 11. Under the above facts and circumstances, it is clear that neither medical evidence nor the ocular evidence is present to succeed in a case of either Section 366 IPC or Section 4 of POCSO Act. The accused person can not be held guilty for any offence. Therefore the accused person is acquitted and set at liberty.
- 12. Bail bond executed by the accused person and the surety are extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 13. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.
- 14. Given under my hand and seal of this Court on this 22nd day of June, 2018.

Dictated & corrected by me.

Sd/-

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta (Smti. C. R. Goswami) Special Judge, Barpeta.

A P P E N D I X

(A) Prosecution witnesses:

P.W.1 = Kamela Khatun, the victim

P.W.2 = Medical Officer Dr. Anima Boro

P.W.3 = Nalu Mia, the informant,

P.W.4 = Kamal Uddin.

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

Ext.1(1) = Signature of the victim,

Ext.2 = Medical report,

Ext.2(1) = Signature of M.O.

Ext.2(2) = Signature of Dr. S.K. Bhuyan

- (C) **Defence witnesses**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta.