# IN THE COURT OF SESSIONS JUDGE ......CACHAR, SILCHAR

# SPECIAL POCSO 08 of 2016

Present:-Shri K. Choudhury, LL.M.,
Special Judge,
Cachar,Silchar

State of Assam
-Versus-
Sunam Uddin
S/O Late Habib Ali
Village : . Saidpur Part V.
P.S: Silchar, Cachar
Charge framed on:- 1/6/16
P.Ws. examined on :- 17/6/16, 31/8/16, 28/9/16, 19/10/16, 2/2/17,
2/5/16, 8/6/16, 13/8/16, 19/12/16.
Statement of accused recorded under section 313 Cr.P.C:5/1/17.
Argument heard on: 23-03-17.
Judgment delivered on:
Ld. Counsel Appeared:
Advocate for the prosecution: Mr. S. Dutta., P.P.,
Advocate for the defence:Mr. D.H. Mazumder, Advocate.

#### **JUDGMENT**

- 1. Prosecution case in brief is that on 30/10/15 at about 5-30 p.m. in the absence of the complainant in the house his minor daughter ,herein below referred as victim, when went out in response of her nature's call, the accused forcibly dragging her mouth took her to the nearby jungle and committed rape on her. On the following morning, the victim was recovered from the house of the accused. Accordingly FIR was lodged showing cause of delay. FIR was registered as Silchar PS case no. 3010/15 u/s365/376 IPC.
- 2. During the investigation the victim was medically examined. Doctor opined her age as above 14 and below 16. She also gave statement before the Magistrate u/s. 164 Cr. P. C.
- 3. On completion of investigation I/O (Investigating Officer) submitted charge-sheet against the accused u/s. 366/342/506 IPC r/w section 4 of POCSO Act. On production of the accused the ld. Judicial Magistrate Ist class after furnishing copies of all relevant police papers as referred u/s. 173(2) Cr.P.C. committed the offence. This Court after hearing both sides and perusing materials on the record framed formal charge against the accused u/s. 366/342 IPC and also u/s 4 of POCSO Ac. The charges were read over and explained to which the accused pleaded not guilty and claimed to be tried. Hence, trial began.
- 4. To prove the case prosecution altogether examined 8(eight)) witnesses as PW including the doctor, and I/O. Defence plea appears to be as denial. Accused has been examined U/S 313 Cr.P.C. and he pleaded innocence.

- 5. Now, the point for determination is whether the accused kidnapped and wrongfully confined the victim? And, also committed the offence of penetrative sexual assault?
- 6. To decide above point I have heard ld. counsel of both sides at length and perused the evidence on the record.

#### DISCUSSION, DECISIONS & REASONS THEREOF:

- 7. PW-1 are PW-2 are the father and mother of the victim who is examined as PW-3. They in their examination in chief implicated the accused persons giving corroborative accounts of the alleged happenings as narrated in the FIR. However, in the cross examination they completely deviated from their earlier stand. PW-1 in his cross examination stated that out of misunderstanding he filed the case and the victim at the material time was a major. He further stated that he did not see the occurrence and he had no grievance against the accused. PW-1 and 2 deposed as a reported witness being reported by their victim daughter PW-3. The PW-3 in her examination in chief though stated against the accused but in her cross examination she stated that her mother settled her marriage without her consent with one Tajim and for that out of anger she went to the house of her cousin namely Rabia Begam on the date of the alleged incident. Rabia Begam is the wife of the present accused. She further categorically stated that she voluntarily went there and the accused did not commit rape on her and her mother out of misunderstanding lodged the FIR.
- 8. PW-4 Mokbul Ali deposed that on query the victim reported that she at her own will went to the house of the accused to avoid her

marriage with another person. He was declared hostile by the prosecution.

- 9. PW-5 and 6 also deposed accordingly. PW-7 is the IO and PW-8 is the MO.
- 10. As the evidence of the material witnesses has been completely rebutted in their cross examination discussion of the evidence of IO and MO is felt not necessary. Similarly, their trustworthiness is also eroded.
- 11. In view of the above discussions it can rightly be held that prosecution case is not proved beyond all reasonable doubts. The accused is thus held to be not guilty of the offence as charged or whatsoever. He is thus acquitted and set at liberty forthwith.
- 12. Bail bond stands discharged.

The judgment is pronounced in the open Court under my seal and signature on this 23<sup>rd</sup> day of March,2017.

Transcribed at my dictation,

Corrected by me and all pages

Bear my signature.

( K. Choudhury )

Sessions Judge

Cachar, Silchar.

Cachar, Silchar.

Sessions Judge

Dictation taken &

### Transcribed by me

K. Bhattacharjee,

Stenographer Gr.-I.

#### IN THE COURT OF SESSIONS JUDGE, CACHAR.

## Spl. POCSO 8 of 16

#### <u>APPENDIX</u>

#### (A) PROSECUTION WITNESSES: -

P.W. 1 – Riaj Ali

P.W. 2 – Farijan Bibi.

P.W. 3 – Rumana Begam

P.W. 4 – Mokbul Ali.

P.W. 5 – Ibrahim Ali.

P.W. 6 – Joynal Abedin

P.W. 7 – Abdul Ajij.

P.W. 8 – Dr. Orina Raha.

(B) <u>DEFENCE WITNESSES</u>: - Nil

(C) <u>COURT WITNESSES</u>: - NIL.

#### (D) PROSECUTION EXHIBITS: -

Ext. 1 - F.I.R.

Ext. 1 (1) - Signature of P.W.1

Ext. 1(2) - Signature of o/c

Ext. 2 - Statement of PW 3

Ext. 2(1), 2(2) - Signature of PW.3 Victim.

Ext. 3 - Sketch map

Ext-4 - C/s.

Ext-4(1) - Signature of P.W.7.

Ext-5 - Medical report

Ext-5(1),(2) - Signature of P.W.8

Ext-5(3), - Signature of Dr. Gunojit Das

Ext-5(3), - Signature of P.W.3

Ext-5(5) - Signature of P.W.1

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) <u>COURT EXHIBITS</u>: - NIL.

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

(Shri K. Choudhuy), Sessions Judge, Cachar, Silchar.