IN THE COURT OF THE SPECIAL JUDGE ::::::::::: HAILAKANDI

Special (POCSO) Case No. 01-2019.

U/S - 366(A) of the IPC read with Sec. 4 of POCSO Act

State

- Versus -

Sandeep Das @ Mitun Das

...... Accused.

PRESENT :- Shri D. Bhattacharjee, Special Judge, Hailakandi.

Appearance and particulars :-

For the State

:- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person

:- Sri M.H. Barbhuiya, Ld. Advocate.

Dates of recording evidence

:- 07.05.2019.

Date of recording statement u/s 313, CrPC :- 13.05.2019.

Date of Argument

:- 13.05.2019.

Date of Judgment

:- 13.05.2019.

UDGMENT

- 1. The prosecution case, in brief, is that on 03.01.2019 the informant Jiten Barman lodged an ejahar with the O/c, Katlicherra Police Station alleging that on 02.01.2019 at about 9.30 PM his minor daughter i.e. the victim went missing from the rented house of one Subudh Das and accordingly, he made vigorous search to find out the vitim but he could not find any clue of the victim but subsequent, the victim came to the house and on being asked, the victim told the informant that the accused Mitun Das @ Sandeep Das kidnapped her from the rented house and committed rape on her.
- 2. On receipt of the ejahar, the same was registered as Katlicherra Police Station Case No. 05/2019 under Sec. 363/376 of the Contd.....P/2.

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IPC read with Sec. 4 of the POCSO Act and accordingly, police started the investigation of the case.

- During investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Sandeep Das @ Mitun Das under Sec. 363/376 IPC read with Sec. 4/15 of the POCSO Act,2012.
- 4. On appearance of accused person, copies of him.
- Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Sandeep Das @ Mitun Das under Sec. 366(A) of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- Nos. of Pws including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- Heard argument of both sides. Perused the record.

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POINTS FOR DETERMINATION :-

(i) Whether the accused person induced the victim to go with him with intent that she may be or knowing that she would be forced or seduced to illicit intercourse, as alleged?

(ii) Whether the accused person committed penetrative sexual assault on the victim, as alleged?

DISCUSSION, REASONS AND DECISION THEREOF :-

that about 4 months back at one night at about 9 PM while he returned hjome from market, he did nto find his daugher in the house and then, he made search for her but could not find her out. The neighboring people told him that the accused kidnapped her and hence, he lodged the FIR against the accused. It is also deposed by the informant that as they all the villagers came out in searching the victim, out of fear, the kidnappers left the victim and subsequently, the victim told him that she could not identify the person who took her away, due to darkness.

In cross examination, the informant has stated that he can not say thre name of the person who reported him that his daughter i.e. the victim was kidnapped by the accused person.

not know the accused person. About 3/4 months back at one night at about 9 PM while she was urinating outside of her house, one person appeared there and under the cover of darkness, took her with him and did bad acts with her but on hearing sound of people, the miscreants fled away leaving her there and subsequently, her father recovered her. Police got her medically examined and also got her statement recorded by Magistrate vide Ext. 1, wherein Ext. 1(1) is her signature.

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In cross examination, the victim has stated that she does not know the accused person standing on the dock. The appearance of the miscreant is not like the accused and the miscreant is much taller than the accused. She has also added in her evidence that she made her statement before Magistrate on being instructed by others and at present, she has got no allegation against the accused.

- The PW. 3, Smti. Joba Barman, the mother of the informant, has deposed that about 3 months back, in one night, her daugther i.e. the victim went missing from home and thereafter, her husband lodged the FIR. She has also deposed that the victim reported her that someone took her away with his bike.
- herself and her evidence bears much significance to prove the alleged commission of the offence. The victim in her evidence has unequivocally divulged that due to darkness, she could not indetify the miscreant and when the miscreant was taking her with him, the people of her village came out raising hue and cry and then the miscreant fled away leaving her there. She has also made it clear that she does not know the accused person standing on the dock and the appearance of the miscreant is not like the accused and he is much taller than the accused. The informant, who is the father of the victim, supporting the version of the victim has stated in his evidence that the victim could not identify the person who took her away due to darkness.
- 12. When the victim has not implicated the accused person in her evidence with the commission of the alleged crime, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.
- Accordingly, the accused person Sandeep Das @ Mitun Das is acquitted of the offence under Sec. 366(A) IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.

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14. The bail bond of the accused person stands discharged.

15. Send a copy of this judgment to the District Magistrate, Hailakandi.

16. The Special (POCSO) case is disposed of

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 13th day of May, 2019.

Special Judge, Hailakandi.

HAILAKANDI

Dictated and corrected by me:-

Special Judge, Hailakandi.

HAILAKANDI

<u>Dictation is taken and transcribed by Baharul Islam Choudhury,</u>
<u>Stenographer Grade I.</u>

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Appendix :-

Oral evidences :-

PW. 1, Sri Jiten Barman.

PW. 2, The victim.

PW. 3, Smti. Joba Barman.

Documentary evidences :-

Ext. 1- Statement of the victim

Defence did not adduce any evidence.

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI