IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.49 of 2017

(U/S 366 IPC and Sec.4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam

-Versus-

Arif Uddin......Accused.

Charge framed on:-.....28.03.18

P.Ws. examined on: 5.7.18,9.8.18,14.9.18,20.11.18,21.2.19,

4.6.19,27.6.19,24.1.20

Argument heard on:-11.2.20.

Judgment pronounced and delivered on:-.....27.2.20.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Smti. S.R. Barbhuiya,ld. Advocate.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that the informant lodged an FIR with the Jirighat P.S. stating the facts that on 17.02.17 at about 4 p.m. the victim sister of the informant went to a nearby shop but she did not return. On search and inquiry the informant could know that the accused along with other co accused abducted the victim. When the informant

communicated with the accused pointing on this matter, the accused gave threatening to him.

- 2. On receipt of the FIR, O/c Jirighat PS registered a regular PS case vide Jirighat P.S. Case No.09/17 U/S 366(A) of IPC . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet only against accused person Arif Uddin U/S 366 A of IPC r/w Sec.6 of POCSO Act.
- 3. As the offence is U/S 366 A of IPC r/w Section 6 of POCSO Act being exclusively triable by the Court of Special court , Id. additional CJM Cachar, Silchar sent the case record to this court and this case was taken up for trial by this court. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 366 of IPC and Section 4 of POCSO Act was framed by this court against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.

Points for determination:

- 4. Now, in the present case the points to be decided are :-
- (1) Whether the accused person on 17.02.2017 at about 4 p.m. at village- Chalitarthal under Jirighat PS had kidnapped the victim, the sister of the informant with intent that she may be compelled to marry against her will or knowing it to be likely that she will be compelled to marry against her will or in order that she will be forced or seduced to illicit intercourse, as alleged?
- (2) Whether the accused person committed penetrative sexual assault upon the victim as alleged ?

- 5. From the prosecution side as many as 12 witnesses were examined including the IO and MO. The statement of the accused was recorded U/S 313 Cr.P.C. where the accused person denied the allegations against him. Defence declined to adduce evidence.
- 6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW.1, Abdul Mannan Laskar who is the informant cum brother of the victim deposed in his evidence that at about 1 & ½ years ago one day at about 3-30 p.m. his victim sister went to a nearby shop but did not return to the house. Thereafter PW.1 and others made search for her and came to know that she is in the house of accused at Karimganj. Thereafter PW.1 lodged the Ejahar vide Ext.1. He further deposed that police recovered the victim from the house of accused at Karimganj. He further deposed in his evidence that at the time of occurrence the age of the victim was above 18 years and she was a student of Class VIII.

PW.1 in his cross examination stated that after the alleged incident the victim was socially married with the accused. He further stated that prior to lodging of FIR he personally visited the house of the accused and also found the victim there but she was reluctant to come with him and thereafter PW.1 came to the village , reported the matter to his relatives and they got one FIR written and as at that time he was not mentally good due to incident he signed the FIR brought by his

relatives without going through its contents. He specifically stated in his cross examination that at the relevant time of occurrence his sister was an adult and she is now happily residing in the house of the accused.

9. PW.2, Monabi Begum Laskar, the mother of the informant deposed in her evidence that at the time of occurrence she was out of her house and being informed about the missing of her daughter she came back to her house on the following day, and that her son searched for her but did not find the victim anywhere and thereafter her son Abdul Mannan Laskar informed Jirighat PS by lodiging an ejahar. She further added that police recovered her daughter from the house of Arif Uddin. She also deposed that at the time of occurrence age of her victim daughter was 18 years.

In her cross examination PW.2 stated that at present her victim daughter is in the house of Arif as they have given marriage of their victim daughter with the accused and they are living peaceful married life. She also stated that they have no allegations or grievances against the accused.

- 10. PW.3, Arjuman Ali Barbhuiya deposed in his evidence that he knew nothing about the occurrence.
- 11. PW.4 , Lily Begum, deposed in her evidence that about two years ago the occurrence took place and Johir Uddin, the father of the victim informed her that on the date of occurrence the accused kidnapped the victim in the evening and thereafter PW.4 came to know that police recovered the victim and gave her zimma to her parents. She also added that at the time of occurrence the victim girl was major.

In her cross examination PW.4 admitted that she did not state to police that father of victim informed her that on the date of occurrence

the accused kidnapped the victim in the evening. She also stated that she personally does not know anything about the incident.

12. PW.5, the victim, deposed in her evidence that accused is her husband and she got married with him him about a year back and they are having a female child. She added that she was in love affair with the accused but her parents wanted to give her marriage with other person and as such she eloped with the accused out of her own accord and her brother lodged an FIR. She further stated that police recovered her from the house of the accused and she was medically examined and her statement was recorded by Magistrate u/s 164 Cr.P.C. She further deposed that after recovery her father took her zimma from the court. She further deposed that as her family members had assaulted her and forced her to leave the accused she again eloped with the accused. She also deposed in her deposition that she has been residing with her husband the accused along with their minor daughter at Karimganj. She further deposed that she has no grievances against the accused.

In her cross examination she stated that presently she has been peacefully living with the accused. She also stated that after her recovery and as per the dictation of her parents and other family members, she had made statement u/s 164 of Cr.P.C. against the accused and the contents of such statements was not of her voluntary one.

13. PW.6 Rukon Ali deposed in his evidence that about one year nine months back the alleged occurrence took place and on that day he heard that the sister of the informant fled away with someone.

PW.6 in his cross examination stated that at the time of occurrence the sister of the informant was above 18 years.

- 14. PW.7 Babu Khan deposed in his evidence deposed that he does not know the informant, victim and the accused. He further deposed that about one year ago he went to Ramkrishnagar along with o/c Jirighat PS and police had apprehended one boy and one girl and brought them to police station.
- 15. PW.8, Dr. Orina Raha, the Medical Officer, deposed in her evidence that on 23.02.2017 she had examined the victim on police requisition and PW.8 deposed that victim narrated history before PW.8 stating that three boys named Arif who was working in a hotel, Fakrul, a driver and another unknown boy forcefully took her in a sumo vehicle and gave her something to smell and she became unconscious and after that when she gained consciousness found herself at the house of Arif and Arif had sexual intercourse with her daily . PW.8 further deposed that on the basis of physical including dental examination, laboratory and radiological investigations done on victim and opined that (i) Her age is above 14 years and below 16 years (ii) No evidence of recent sexual intercourse is detected and (iii) No evidence of injury on the body or genitals detected.
- 16. In her cross examination the PW.8 admitted that she gave her opinion regarding age on the basis of radiological report and she has neither brought the said X-ray plate to the court today nor submitted the same to the IO.
- 17. PW.9, Robjana Bibi, who is the mother of accused, deposed in her evidence that about 2/ 2 & ½ years ago her son accused Arif Uddin came to his house along with a girl (i.e. the victim) and thereafter the said girl got married with her son socially in presence of well wishers and Kaji and thereafter police came and apprehended the accused and after

the release of accused from jail both the families jointly celebrated their marriage socially.

In his cross examination, PW.9 stated that at present the accused and the victim have been living peacefully as husband and wife and at the time of marriage the victim told her age as 19 years before them and the villagers and Kaji.

- 18. PW.10 Najima Begum and PW.11- Haidar Hussain deposed in the same manner stating that at the relevant date and time accused married one girl and thereafter police arrested the accused. Both these above witnesses stated in their cross examination that after release of the accused from jail the parents of the victim and family of the accused celebrated the marriage between the accused and the victim socially and at present they have been living peacefully as husband and wife having been blessed with one minor daughter.
- 19. PW-12 is the IO Sri Sanjeeb Kumar Das, who has narrated various stages of investigation conducted by him and he submitted charge sheet against the accused vide Ext.6 and Ext.6(1) is his signature. PW-12 in his cross examination stated that he did not collect the birth certificate or school certificate of the victim and did not enquire to know in respect of loss of academic year of the victim due to failure.
- 20. Appreciating the evidence available on record as discussed above, it reveals that the prime witness the victim PW.5 in her evidence deposed that she voluntarily eloped with the accused and got married with him out of love affair and presently she has been peacefully living with the accused having blessed with a child. PW.1, the informant of the case, being the brother of the victim deposed that he lodged the FIR as he came to know that the victim was at the house of accused and at that time victim was of above 18 years of age and in his cross

examination he stated that victim was socially married off with the accused. PW.2, the mother of the victim also deposed that at the time of occurrence age of the victim was 18 years and victim was married off with the accused. PW.3 did not know anything about the occurrence. PW.4 who is a reported witness though stated in her evidence that father of the victim reported her that accused kidnapped the victim but in her cross examination she categorically stated that she personally does not know anything about the incident. PW.6, PW.7, PW.9, PW.10 and PW.11 did not implicate the accused in the alleged offence of crime. Though PW.8, the Medical Officer deposed in her evidence that the victim gave her history to PW.8 implicating the accused as discussed above but this piece of evidence will not help to the case of the prosecution, particularly, in view of the evidence of victim PW.5 herself. appears from the discussions above that the victim eloped with the accused voluntarily and got married with him and they have been now peacefully as husband and wife.

21. As regards age of the victim, the informant PW.1, stated that victim was of above 18 years age at the time of occurrence. PW.2, the mother of the victim being guardian of the victim deposed that victim was 18 years of age at the time of occurrence. PW.6, an independent witness also stated that at the time of occurrence the sister of the informant (i.e. the victim) was above 18 years. PW. 9, the mother of the accused stated in his cross examination that at the time of marriage the victim disclosed her age as 19 years before them and the villagers and Kaji. The medical officer opined that age of the victim was above 14 years and below 16 years at the time of occurrence. So it appears that there was no mention of the exact age in the medical report and there may be variation of age of two years on either side. Moreover, the

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Medical officer gave the opinion basing on radiological report but the Xray report was not submitted before the court. The prosecution side also failed to produce the birth certificate or school certificate and the IO also admitted in his cross examination that he did not collect the birth certificate or school certificate of the victim. That being the position, there is no option before this court, particularly in view of the oral evidences as discussed above, than to hold that the victim was major at the time of occurrence.

- 22. In view of the above observations and discussions made above, I am of the opinion that the accused cannot be fastened with the alleged offence of crime as leveled against him and deserves to be acquitted.
- 23. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366 of IPC and Sec. 4 of POCSO Act against accused.
- 24. In view of the above, accused person is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bond stands discharged.

Judgment is pronounced and delivered in the open court on this the 27th day of February, 2020.

Dictated and corrected by

(Darak Ullah) Special Judge,

Cachar, Silchar.

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

Special Judge,

Spl.(POCSO) Case No.49/17

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 49 of 2017.

APPENDIX

(A) PROSECUTION WITNESSES: -	
P.W. 1	– Abdul Mannan Laskar
P.W. 2	– Monabi Begum Laskar,
P.W. 3	– Arjuman Ali Barbhuiya,
P.W. 4	– Lily Begum ,
P.W. 5	– victim.
P.W. 6	– Rukon Ali,
P.W. 7	– Babu Khan,
P.W. 8	– Orina Raha, M.O.
P.W. 9	– Robjana Bibi,
P.W. 10	– Najima Begum ,
P.W. 11	 Haidar Hussain,
P.W. 12	– Sanjeeb Kr. Das, IO,
(D) DEEENCE	MITNECCEC. NII
	WITNESSES: - NIL
Ext. 1	ITION EXHIBITS: -
Ext. 2	– Ejahar– Statement of victim
Ext. 3	
Ext. 4	– Medical Report– Sketch map.
Ext. 5	– Sketch Map. – Search list
Ext. 6	
LXL. U	– Charge sheet
(E) <u>DEFENCE EXHIBITS</u> : - NIL.	
(F) COURT EXHIBITS: - NIL.	

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.