## IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

# Spl(POCSO) case No.33 of 2018.

(U/S:366(A) IPC & 376 IPC read with Section 4 of POCSO Act)

State -Versus-

**Md. Golap Hussain** S/O: Md. Jahur Ali Village- Alisinga Jngal

P.S- Dalgaon

Dist-Darrang(Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

### APPERANCE:

Learned advocate for the state: Mr. Premeswar Sarma,

AND

Learned advocate for the accused :Mr.Saidur Rahman

Evidence recorded on :09/07/19, 16/08/19, 17/09/19 & 03/10/19.

Argument heard on :03/10/2019

Judgment delivered on :03/10/2019

## **JUDGMENT**:

- 1. The case of the prosecution in brief is that on 07/07/2018 one Lokman Ali lodged an FIR before the O/C, Dalgaon Police Station stating that on 06/07/2018 at about 8 p.m. his daughter Miss X(real name is withheld) aged 16 years went on missing when she came out to respond call of nature from her house. After a thorough search conducted by him, it was learnt that the accused person namely Golap Ali and Sultan Ali kidnapped his daughter.
- On the basis of the said FIR, Police registered a case. During investigation
  Police got the statement of the victim Miss X recorded U/S 164 Cr.P.C. On
  the basis of the material collected by the I.O. a charge sheet was lodged
  against the accused U/S 366(A)/376 I.P.C. read with Section 4 of POCSO
  Act.
- 3. The copy was furnished to the accused. The written charge U/S 366(A)/376 I.P.C. read with Section 4 of POCSO Act was explained and read over to the accused to which the accused pleaded not guilty.

### 4. **Points for determination**:

- (i) Whether on 06/07/2018 at about 8 p.m. minor Miss X was kidnapped by the accused person for the purpose of marriage or sexual intercourse with her?
  - (ii)Whether on the same date, time and place Miss X was raped by the accused Golap Ali?
  - (iii)Whether the accused person committed an offence of sexual assault against the victim Miss X, who was minor at that time?

### **REASONS AND DECISION THEREON**

5. In the course of trial, the prosecution examined PW1 Lokman Ali, PW2 Miss X , PW3 Nurun Nessa and PW4 Hitesh Bora.

- 6. PW1 has stated in his evidence that on the day of the incident he found his daughter Miss X went missing. Thereafter, he filed a case. After two days he learnt that Miss X was in the house of accused Golap. Police recovered Miss X and handed over to him. But later she again went to the house of Golap and they got married.
- 7. PW2 Miss X has stated in her evidence that both she and the accused Golap fell in love with each other and both of them left their houses and got married. In this regard, a case was lodged by her father. She proved Ext.2 as her statement recorded in the Court. It has come that she led a conjugal life with the accused Golap.
- 8. PW3 Nurun Nessa has stated that on the night of the incident her daughter Miss X was found missing and later it is learnt that she was with Golap. Thereafter, a case was filed and Police recovered her from the house of Golap.
- 9. PW4 Hitesh Bora has stated that in this case he only submitted charge sheet.
- 10. This is the evidence of the prosecution. During the investigation, the I.O. produced the victim Miss X before the doctor of Kharupetia PHC for her medical examination, but she declined to go for any physical, laboratory, ultrasound and X-ray test.
- 11. In the course of argument the learned Public Prosecutor has submitted that in this case the I.O. seized one birth certificate issued by Kharupetia PHC on 13/06/2011 showing date of birth of Miss X as 07/06/2002. But the copy of the same has not been produced before this Court. It is stated by Miss X in the court while she was produced for recording her statement U/S 164 Cr.P.C. that at her own sweet will on the day of the incident she left with the accused Golap Hussain to his paternal anti's house. They remained there for one day. Thereafter, Police recovered her. According to the learned Public Prosecutor at the time of the incident the

victim was minor and her consent to proceed with the accused is no consent and therefore, the accused Golap Hussain is liable for offence U/S 366 I.P.C.

- 12. The offence of kidnapping is of two kinds. The kidnapping from India and kidnapping from lawful guardianship. Section 361 IPC deals with the offence of kidnapping from lawful guardianship. As per the said section whoever takes or entices any minor under sixteen years of age if a male, and under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.
- 13. Out our case, the accused did not take or entice the victim(PW2) Miss X. It has come that both she and the accused Golap left from their respective houses and they got married. They had love affair. Accompanying someone cannot be considered as 'taking" or 'enticing' by the person with home a minor proceeds.
- 14. PW1 and PW3 are the guardians of the victim(PW2). There is no evidence in their deposition that they were aware about the love affair between the sides and they had tried to resist their love affair and in spite of resistance the accused had tried to win her mind by deceit. In such a situation the accused cannot be held guilty for kidnapping Miss X. There is absolutely no evidence regarding the alleged rape of Miss X.
- 15. Therefore, the accused person cannot be held guilty for the charges levelled against him. Hence, the accused Golap Hussain is acquitted and set at liberty forthwith.
- 16. However, the bail bond of the accused shall remain in force for next 6(six) months U/S 437(A) Cr.P.C.

17. Given under my hand and seal of this Court this 3rd day of October,2019.

(P.K.Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

## **APPENDIX**:

- (A)Prosecution witnesses:
- (i)PW1 Lokman Ali (ii)PW2 Miss X (iii)PW3 Nurun Nessa (iv)PW4 Hitesh Bora.
- (B) Defense witness: Nil
- (<u>C)Exhibit</u>s: (i)Ext.1 FIR
- (ii)Ext.2 statement of victim.
- (ii)Ext.3 charge sheet.

Sessions Judge, Darrang,Mangaldai.