IN THE COURT OF SPECIAL JUDGE :: KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.49/2019
U/S 366 of IPC R/W Sec 4 of POCSO Act

STATE OF ASSAM

Vs

Sri Biswajit Karmakar S/O Sri Mantu Karmakar village- Tengapara, W No.5 P.S.Kokrajhar District- Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P.

Learned Counsel for the defence Mr. U. C. Nath

Charge framed on 03.02.2020

Evidence recorded on 17.02.2020; 13.03.2020

Argument heard on 13.03.2020 Judgment pronounced on 13.02.2020

JUDGMENT

1. The case of the prosecution is that on 27.10.2012 one Smt xxx, mother of the victim, lodged a writen complaint before the Chief Judicial Magistrate, Kokrajhar alleging that accused Sri Biswajit Karmakar has abducted her minor daughter. The complaint was forwarded to Kokrajhar P.S and a case under Section 366A/324/34 IPC was registered. In the

course of investigation, a charge under Section 4 of the POCSO Act was added.

- 2. After completion of the investigation, a charge sheet was laid against the accused Sri Biswajit Karmakar for commission of offence U/S 363 of IPC, R/W Section 4 of POCSO Act.
- 3. The accused person was arrested and produced before the Special Judge. On his production, copies of the relevant documents were furnished to him. After hearing both the sides charges under Section 366 of IPC, R/W Section 4 of POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial prosecution examined 4 (four) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

5. POINTS FOR DETERMINATION:-

- (ii) Whether the accused is guilty of offence under Section 366 of IPC ?
- (i) Whether the accused is guilty of offence under Section 4 of the POCSO Act?

DECISION AND REASONS:

6. Pw1 Smti. Xxx, mother of the victim, deposed that about 8 years back her daughter, xxx, the victim, went missing. She had lodged an FIR at Kokrajhar Police Station. After about 2/3 years, her daughter

came home. She came to know that her daughter had married the accused and has girl child. Her daughter is presently living with the accused. She has 2 children. At the time of lodging the FIR she did not know that there was a love affair between accused and her daughter. She had lodged the FIR before the learned Chief Judicial Magistrate, Kokrajhar. Exhibit-1 is the complaint and Exhibit 1(1) and 1(2) are her signatures.

- 7. In cross examination Pw1 deposed that her daughter had already attained the age of 18 years at the time when she eloped with the accused.
- 8. Pw2 Smti. Xxx, the vicitm, deposed that she knows the accused. He is her husband. About 8 years back she eloped with the accused and married her. She has 2 children. The eldest one is a daughter, aged about 6 years and the younger one is a son is aged about 3 years. Her mother lodged the FIR out of mistake of facts. She is presently living with the accused.
- 9. Pw3 Smti. Rubi Das deposed that about 8 years back xxx, the mother of the victim, was her tenant. One day she learnt that her daughter has married the accused. She does not know anything else about the case.
- 10.. Pw4 Sri Jhantu Sarkar deposed that he know the informant. He deposed that in the year 2012 the daughter of informant eloped with a boy. He only knows this much about the case. He does not know with whom she eloped.
- 11. The evidence on record does not reveal any ingredients for the offence of kidnapping or for the offence of penetrative sexual assault on

a minor child. The mother of the victim deposed that the victim had attained the age of 18 years at the time when she eloped with the accused. So being the evidence on record, the charges fail and points for determination are answered in negative.

ORDER

Accused Sri Biswajit Karmakar is acquitted of the charges under Section 366 of IPC, R/W Section 4 of POCSO Act and set at liberty forthwith.

His bail bonds shall remain valid for six months.

Given under the hand and seal of this Court on this 13th day of March 2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

<u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 Complaint

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Smti. Sarada Sarma
P.W.2 Smti Anima Karmakar
P.W.3 Smti. Rubi Das

P.W.4 Sri Jhantu Sarkar

4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge(FTC), Kokrajhar