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

### Special (POCSO) (T1) Case No. 15/2017

U/S - 366(A) of the IPC r.w. Sec. 4/8 of POCSO Act.

#### State

- Versus -

Rakesh Debnath &

Santosh Roy

......Accused.

PRESENT :-

Shri D. Bhattacharjee, Special Judge, Hailakandi.

### Appearance and particulars :-

For the State

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

For the accused persons :- Sri N.H. Barbhuiya, Ld. Advocate.

Dates of recording evidence :- 05.12.2017 & 03.01.2018.

Date of recording statement u/s 313, CrPC :- 04.01.2018.

Date of Argument

:- 04.01.2018.

Date of Judgment

:- 04.01.2018.

#### JUDGMENT

The prosecution case, in brief, is that on 15.09.2017 the informant Smti. Shuvra Malakar lodged an ejahar with the O/C, Hailakandi Police Stating alleging that on 14.9.2017 in the evening at about 3 PM the accused persons Rakesh Debnath and Santosh Roy kidnapped her minor daughters i.e. the victims of this case. Contd...P/2.

-2-

- 2. On receipt of the ejahar, a case vide Hailakandi P.S. Case No. 581/2017 was registered under Sec. 366/34 of IPC and accordingly, police started investigation of the case.
- During investigation, police visited the place of occurrence, recorded statements of witnesses including the informant, got both the victims medically examined and also got their statements recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused persons Rakesh Debnath and Santosh Roy under Sec. 366/34 of IPC read with Sec. 4 of the POCSO Act.
- 4. On appearance of accused persons, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to them.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused persons have committed the offence, the formal charges have been framed against the accused persons Rakesh Debnath and Santosh Roy under Sec. 366(A) of the IPC read with Sec. 4/8 of the POCSO Act. The charges so framed were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. Hence, the trial.
- 6. In the instant case, the prosecution has examined only both the victims and their mother, the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was

SPECIAL JUDGE SPECIAL JUDGE

-3-

closed. The accused persons are examined under Sec. 313, CrPC, wherein they have denied the allegations levelled against them by the prosecution. The defence did not adduce any evidence.

7. Heard argument of both sides. Perused the record.

### **POINTS FOR DETERMINATION:**

(I) Whether the accused persons on 14.09.2017 in the evening at about 3 PM kidnapped both the victims with intent that they might be compelled or knowing it to be likely that they would be compelled to marry against their will or that they might be forced or seduced to illicit intercourse, as alleged?

(ii)Whether the accused persons after kidnapping the victims committed penetrative sexual assault and other sexual activities up on them, as alleged?

### **DISCUSSION, REASONS AND DECISION THEREOF** :-

8. The PW. 1, Smti. Shubra Malakar, the mother of both the victims i.e. the informant, has deposed that about2 days before the last Durga Puja, she went to the house of her neighbour keeping her daughters in the house but after her return at home, she did not find them in the house. Accordingly, she made vigorous search but did not find them and thereafter, she lodged the ejahar of the case. This witness has also deposed that the accused persons used to take her daughters for roaming and as such, out of suspect, she lodged the ejahar implicating the accused persons. On the next day in the evening, her daughters returned home. She has also exhibited Ext. 1, ejahar

SPECIAL PUDGE SPECIAL PUDGE

-4-

and her signatures therein under Exts. 1(1) and 1(2).

In the cross examination, the PW. 1 has stated that she has got no accusation against the accused persons.

9. The PW. 2, Smti. Sharda Malakar @ Payel Malakar has deposed that on the last Durga Puja, herself and her sister Pouja Malakar went to their maternal aunt's house at Silchar without informing their parents and the accused persons helped them to reach there, wherein they stayed for 2 days and as such, their mother filed the case out of suspect against the accused persons. This witness has also deposed that she made statement before the Magistrate vide Ext. 2 and Exts. 2(1) and 2(2) are her signatures.

In cross examination, this witness has deposed that she made the statement before the Magistrate on being tutored by her family members and she has got no objection if the accused persons are acquitted.

10. The PW. 3, Smti. Puja Malakar has deposed that on the last Durga Puja, herself and her sister went to Silchar without informing their parents and the accused persons accompanied them there and as such, her mother lodged the case against the accused persons out of suspect. She has also exhibited her statement made before the Magistrate under Ext. 3 and her signatures under Exts. 3(1) and 3(2).

SPECIAL JUDGE

In cross examination, the PW. 3 has deposed that on being influenced, she made statement before the Magistrate. She has further deposed that the accused persons being their neighbour accompanied them to Silchar.

-5-

- 11. Here in this case, only the victims and their mother, the informant have been examined. The informant, PW. 1, in her evidence has clearly stated that finding her daughters, the victims, in the house, not available, she lodged the case against the accused persons out of suspect as the accused persons used to take her daughters for roaming.
- 12. The victims, who are the most important witnesses to decide the fate of the case, in their evidence have vividly stated that on the relevant day she went to Silchar without informing their parents and the accused persons being neighbour accompanied them and as their mother did not find them in the house, she lodged the ejahar, rather the victims as well as the informant have clearly divulged in their cross examination that they have got no objection if the accused persons are acquitted. When the victims of the case, whose evidence bears much significance, have not supported the prosecution case implicating the accused persons, there is nothing remained to create any doubt that the accused persons committed the alleged crime. Moreover, though in their statement made before Magistrate, the victims implicated the accused with the commission of the alleged crime but in their evidence before this Court, both the victims have vividly divulged that on being tutored, they made the statements before the Magistrate. As such, keeping in view the evidence of victims, I do not find any concrete reason to hold the accused persons guilty for the commission of the crime, alleged. Accordingly, I find it appropriate to acquit the accused persons Rakesh Debnath and Santosh Roy, who have been charged under Sec.

STATIAN AND

-6-

366(A)of the IPC read with Sec. 4/8 of the POCSO Act.

- 13. In fine, the accused persons Rakesh Debnath and Santosh Roy are acquitted of the charges levelled against them and they are set at liberty forthwith.
- 14. The bail bonds of the accused persons stand discharged.
- 15. Send a copy of this judgment to the District Magistrate, Hailakandi.
- The Sessions Case is disposed of accordingly.
- Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 4th day of January,2018.

Specail Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

Dictated and corrected by me :-

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

<u>Dictation is taken and transcribed by Baharul Islam Choudhury,</u>

<u>Stenographer Grade I.</u>

- 7-

#### Appendix :-

#### Oral evidences :-

PW. 1, Smti. Shuvra Malakar,

PW. 2, Smti. Sharada Malakar @ Payel Malakar,

PW.3, Smti. Puja Malakar.

# Documentary evidences :-

Ext. 1- Ejahar,

Ext. 2- Statement of victim Smti. Sarada Malakar,

Ext. 3- Statement of the victim Smti. Puja Malakar.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI