IN THE COURT OF THE SPECIAL JUDGE, DHEMAJI.

Present:

Shri S. Das, A.J.S.,

Special Judge, Dhemaji,

JUDGMENT IN SPL.(POCSO) CASE NO. 32(JN) 2017.

U/S 366/376 IPC R/W Sec.4 of POCSO Act.

The State of Assam

- Versus -

Shri Ujjal Mili

.....Accused Person

S/O Lt. Juga Mili,

R/O Lisang Dolony Gaon,

P.S. Jonai,

Dist.- Dhemaji.

Appearance:

Shri A. Fogla,

Public Prosecutor

.....For the State

Shri M. Dihingia, Advocate

.....For the Accused

Date of prosecution evidence

: 21-07-2018, 22-11-2018.

Date of argument

: 22-11-2018

Date of Judgment

: 03-12-2018.

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<u>JUDGMENT</u>

- 1. The prosecution case, in brief, is that on 18-10-2017 complainant- Beslim Taye lodged an ejahar with Simen Chapari Police Station alleging interalia that on that day i.e. on 18-10-2017 at about 11.30 took away his minor daughter Smti 'X' (name is withheld) aged about 13 from the road to Pasighat by a Wagoner Car bearing Registration No.AS-06 E-7545 and committed rape on her there and after committing the crime they came back to Laimekuri by the said vehicle and dropped her there and he (accused) tried to leave the place and his daughter then called him over telephone and he accordingly went there and took them both to his house.
- 2. On receipt of the ejahar, police registered a case and started investigation and on completion of investigation Police submitted Chargesheet against the accused-Ujjal Mili u/s 366 of IPC R/W section 4 of the POCSO Act.
- 3. On receipt of the case record and on appearance of the accused, this Court considered the materials on record and upon hearing both the sides, framed charges u/s 366 IPC R/W Sec. 4 of POCSO Act and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined three witnesses. At the closure of the prosecution evidence statement of the accused was recorded u/s 313 Cr.PC. Defence plea is of total denial. However, the defence adduced no evidence in support of his defence.

4. Point for determination:

(1) That, on 18-10-2017 at about 11.30 AM you kidnapped/abducted Smti 'X', a minor girl aged about 13 years from the PWD Road to Ramdhan under Simen Chapari Police Station with

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intent that she might be forced or seduced to illicit intercourse and thereby you committed an offence punishable u/s 366 of IPC.

- (2) That, on the same day, time and place you committed rape on Smti 'X', a minor girl aged about 13 years, having sexual intercourse against her will and consent and thereby you committed an offence punishable u/s 376 of IPC.
- (3) That, on the same day, time and place you committed penetrative sexual assault on Smti 'X', a minor girl aged about 13 years and thereby you committed an offence punishable u/s 4 of POCSO Act.
- 5. I have gone through the evidence on record and heard arguments of both sides.

Discussion, Decision and Reasons thereof

6. **PW1** is the victim girl Smti 'X'. She stated that complainant is her father. The accused is his cousin. The incident took place about one year ago. One day, she along with the accused went to Pachighat without knowledge and consent of her parents. When she came back home in the evening her parents asked her as to why she had gone to Pachighat without their consent. At that point of time she told her parent that the accused induced her to go with him and she also told her parents that he physically abused her due to fear of her parents. The accused is related to her and he used to visit their house and at present also her parents and she herself maintained good relation with the accused. Hence, they are not willing to proceed against the accused.

In her cross-examination PW1 stated that the accused may be acquitted in this case as there was some misunderstanding between them

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and she herself and her family members after discussion, decided that the accused should not get punishment as he is not involved in committing sexual assault.

7. **PW2** Baslime Taye stated that he is the complainant. He know the accused, he is related to him. Victim Smti 'X' is his daughter. The incident took place about one year ago. One day daughter and the accused together went to Pachighat and other places for a visit without our knowledge and consent. They could not find their daughter at home till evening, so they started to look for her here and there and they came to know that she had gone with the accused to Pachighat. However, her daughter returned back home in the evening and they suspected that the accused physically abused his daughter. Accordingly, he lodged complaint at the police station. After filing of the ejahar the accused came to our house and on being asked he told that his daughter wanted to go to Pachighat, so he accompanied her. On being asked his daughter also supported the statement of the accused and hence they are not willing to proceed against the accused. Ext.1 is the ejahar. Ext.1(1) is his signature.

In cross- examination PW2 stated that due to misunderstanding the case was filed against the accused. Hence, the accused may be acquitted in this case.

8. **PW3** Smt. Dipika Patir stated that she knows the complainant. She knows accused Ujjal Mili. Victim Smti 'X' is her friend. The incident took place one year ago. On the date of occurrence she along with the victim went to Pashighat for a sight seeing and then in the evening they came back home. During the trip to Pashighat she was all along with accused and her friend. Nothing untoward happened and the accused did not misbehaved or abuse us. The case against the accused has been filed due to some misunderstanding. She gave statement before police and Magistrate. Ext.2 is her statement before Magistrate. Ext.2(1) and Ext.2(2) are her signatures

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Defense declined to cross-examine this witness.

Appreciation of evidence:

9. From the discussion of the evidence on record, it appears that in this case the victim and her father Baslim Taye were examined as P.W-1 and PW2 respectively. PWs-1 and 2 stated that on the day of occurrence the victim girl had gone to Pachighat and other places for a visit without the knowledge and consent of the parents of the victim. However, the victim and the accused came back home in the evening and the parens of the victim suspected that the accused physically abused the victim. Accordingly, PW-2 lodged complaint with police. After filing of the ejahar, the accused came to their (PWs-1 and 2) house and on being asked, he told that the victim wanted to go to Pachighat and so he accompanied her. The victim also supported the statement of the accused and hence, they are not willing to proceed against the accused. In cross-examination both the PWs-1 and 2 stated that due to some misunderstanding the case was filed against the accused. So, they prayed that the accused may be acquitted in this case. PW3 Dipika Patir is the friend of the victim girl. She stated that she along with the victim went to Pachighat for a sight seeing and then in the evening they came back home. She further stated that during the trip to Pachighat, she was all along with the accused and the victim. Nothing untoward happened and the accused did not misbehave or abuse them. The case was filed against the accused due to misunderstanding only. Prosecution side declined to examine the remaining witnesses on the ground that examination of other witnesses will not improve the prosecution case at all.

10. On consideration of the evidence on record, I find that there is no incriminating evidence to rope the accused with the commission of the alleged offences. This is a case of no evidence. It is also seen from the evidence of the PWs- 1, 2 and 3 that both the parties have compromised the

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- In view of the above, I find the accused-**Ujjal Mili** not guilty u/s 366/376 of the I.P.C. read with Section-8 of POCSO Act. Accordingly, he is acquitted of the charges leveled against him. Set him at liberty forthwith.
- 12. Judgment is pronounced in open Court.

13. Given under my hand and seal of this Court on this the **3rd day of December/2018.**

Special Judge, Dhemaji.