## IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

Present : Smti. S. Bora,

Sessions Judge, Udalguri.

Reference : **Special (POCSO) Case No. 11/2017.** 

Complainant : State

Vs

Accused : 1. Jakarius Kosla,

2. Keopa Kosla.

# Charges: U/S 366A/344 IPC R/W Sec. 4 of POCSO Act.

Dates of hearing : 13.2.2018

Date of Judgment : 13.2.2018.

For the State : Mr. P. Baskey, Public Prosecutor.

For the accused : Mr. P. Lumga, Advocate.

### <u>JUDGMENT</u>

In this case accused Jakarius Kosla and Keopa Kosla put for trial for allegation of charge U/S 366A/344 IPC R/W Sec. 17/4 of POCSO Act.

- 2. The various fact leading to institution of this case, according to FIR, in brief, is that in the last week of July,15, the daughter of informant went to market but did not return. On the next day morning father of the accused came to the house of informant and informed him that accused have confined the daughter of informant and want to marry her daughter. While the informant asked the father of accused Jacarius Kosla to handover his daughter they refused. Hence this prosecution case.
- 3. The FIR was filed by informant, Ashok Konwar before the O/C, Mazbat PS. On receipt the ejahar the O/C, Mazbat P.S. registered the

case vide Mazbat P.S. case No. 81/15 U/S 366/344 IPC R/W Sec. 4 of POCSO Act. After completion of usual investigation the O/C, Mazbat P.S. sent up the case for trial against the accused persons U/S 366A/344 IPC R/W Sec. 17/4 of POCSO Act.

- 4. On being production of the accused persons before this court after hearing both parties charge framed U/S 366A/344 IPC R/W Sec. 17/4 of POCSO Act. Particulars of the charge is read over and explained to the accused, to which they pleaded not guilty and claims to be tried.
- 5. To substantiate the case, prosecution examined as many as two witnesses which include the informant and the victim. Ld. Counsel for prosecution submitted to close the evidence as the statement of informant and victim, who are the vital witness in this case stated nothing about the incident. So it would be futile to summon the other witnesses.

On close scrutiny of the record including the statement of witnesses recorded so far, I think prosecution case would not develop even if examine the other remaining witnesses.

It has been held in S. Rama Reddy Vs. R. Ramy Reddy, reported in AIR (SC) (2008) 2006 that speedy trial is the fundamental right of the accused person.

Considering the aforesaid view coupled with the aforesaid mandate of the Hon'ble Apex Court, prosecution evidence is closed.

Examination of accused persons U/S 313 Cr.P.C. is dispensed with.

6. I have also heard argument put forward by ld. Counsel for both sides.

#### POINTS FOR DETERMINATION

7. The point for decision in this case are-

- (i) Whether the accused persons in the last week of July,15 at about 5 PM at Dhansiri TE under Mazbat PS kidnapped Miss Chanda Konwar, a girl under eighteen years of age, with intent that she may be forced to illicit intercourse with the accused?
- (ii) Whether the accused persons on the same day, time and place wrongfully confined Miss Chandra Kuwar for more than three months?
- (iii) Whether the accused persons on the same day, time and place committed penetrative sexual assault upon the victim Miss Chandra Kuwar, aged 14 years?
- (iv) Whether the accused Keopa Kosla abetted accused Jakarius Kosla to confine Miss Chandra Konwar?

### **DECISIONS, DISCUSONS AND REASONS FOR DECISION**

- 8. To arrive at a judicial decision, let me appreciate the evidence on record.
- 9. PW1, Chandra Kosla is the victim in this case. She deposed that she knows the accused. The occurrence took place about 2 years ago. Prior to incident she had love affairs with the accused Jacarius Kosla. Out of love affairs she eloped with the accused at her own will. As her step mother tortured her so she went with the accused. At present she is staying with the accused in his house. She made statement before the magistrate, where she put her thumb impression.

In cross-examination she stated that the accused did not force her to go with him. The accused persons also did not force her to live with them.

10. PW.2Ashok Konwar, who is the informant and father of the victim deposed that he is the informant of this case. He knows the accused persons. They hail from their village. He has second wife. His first wife had expired. His daughter went with the accused on her own will. At present she is staying with the accused persons in their

house. The age of his daughter is about 20 years. She got voter ID. He lodged the ejahar, wherein he put his thumb impression.

In cross-examination this witness stated that now he has no objection if his daughter stayed with the accused.

- 11. These much is the evidence of prosecution.
- 12. In this case, as discussed above, the PW1, who is the victim of this case stated clearly that accused did nothing with her. Similarly, PW2, informant cum father of the victim stated that his daughter went with the accused at her own will and he has no objection if his daughter stayed with the accused. There is no any iota of evidence to show that accused persons committed the crime. Even there is no any circumstance to infer the accused persons in the alleged charges.
- 13. As such, I have, therefore, no hesitation to hold that accused persons are entitled to get benefit of doubt. As such, acquit them and set at liberty forthwith.

Given under my hand and seal of this court on this the 13<sup>th</sup> day of February, 2018 at Udalguri Court.

(S. Bora) Special Judge, <u>Udalguri, BTAD</u>.

Dictated and corrected by me and each page bears by signature.

(S.Bora) Special Judge, <u>Udalguri, BTAD</u>.