IN THE COURT OF SPECIAL JUDGE :: :: :::::: CACHAR, SILCHAR Spl.(POCSO) Case No.15 of 2017

(U/S 342 / 363 IPC and Sec. 5(m) punishable under section 18 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of AssamComplainant.

-Versus-

Sahajahan Islam Laskar alias Suman	Accused.
Charge framed on:	1.12.18
P.Ws. examined on:	17.2.20
Argument heard on:	17.2.20.
Judgment pronounced and delivered on:	17.2.20.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr.F.R.Barbhuiya, Id. Advocate.

JUDGMENT

1. The prosecution case, in brief, is that the informant lodged an FIR with the I/C of Lakhipur PS stating the facts that on 1.05.17 at about 5 p.m. the minor daughter (name withheld) of the informant returned home on weeping and on query she reported in absence of the informant and her husband the accused called her in his house and tried to commit rape on her and as a result the victim daughter of the informant sustained injuries on different part of her body.

- 2. On receipt of the FIR, O/C, Lakhipur PS registered a regular PS case vide Lakhipur P.S. Case No.83 of 2017 U/S 342/363 IPC R/W Section 4 of POCSO Act. Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet against accused U/S 342/363 IPC r/w section 4 of POCSO Act.
- 3. The offence u/s 4 of POCSO Act of the case being exclusively triable by the Court of Special Judge, this case was taken up for trial after filing of the charge sheet. In due course, upon appearance of the accused and after hearing both sides formal charge U/S 342/363 of IPC and Section 5(m) punishable under section 18 Act was framed by this court against the accused person. The charges having been read over and explained the accused pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (i) Whether on 01.05.17 at about 5-30 p.m. the accused person wrongfully confined the victim daughter of the informant in his house in order to commit rape upon her, as alleged?
- (ii) Whether the accused kidnapped the minor daughter of the informant from the lawful guardianship, as alleged?
- (iii) Whether the accused person committed penetrative sexual assault on the victim, as alleged ?
- 5. Prosecution side examined as many as 2 witnesses i.e., the victim and the informant as PW.1 and PW.2 respectively. On the submission of the Id. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S

313 Cr.P.C. is dispensed with.

6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

DISCUSSIONS, DECISIONS AND REASONS THERE-OF

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW.1 is the victim who is the prime witness of this case and after examining the witness with the certain questions she is found to be competent witness and capable of answering rationally and as such her statement was recorded without taking oath in camera.
- 9. PW.1, the victim, stated in her statement that at the time of occurrence she was a student of class I at Tractor tilla School and her mother went to jungle to collect firewood and then she went to the house of the accused Suman to play with the son of the accused. She further stated that during playing the son of the accused Suman assaulted her with a lathi on her head and she sustained bleeding injuries and she returned her home on crying and told them that son of the accused had assaulted her with a lathi and her parents took her to a doctor who treated her. She also stated that her mother lodged the case and Police sent her to SMCH, Silchar where her medical examination was done and thereafter she was brought to the Court where her statement U/S 164 Cr.P.C. was recorded.

She stated in her cross examination that the house of the accused is contiguous to their house and the accused is having his parents, wife and children. She also stated that she stated before the Magistrate that the son of the accused Suman had assaulted her with a lathi on her head.

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PW.2, Lakhi Rikiason, the informant of this case deposed in her 10. evidence that the occurrence took place about two years ago. At that time she along with her husband went to jungle for collecting firewood keeping their victim daughter at home. She further deposed that her victim daughter went to the house of the accused Suman and was playing with his son and returning home at about 5 PM PW.2 saw that her victim daughter was crying and on being asked, victim did not tell her anything at that moment. She also deposed that she informed the matter to neighbours who took her to Lakhipur PS and got an FIR written wherein her thumb impression was taken. Police sent her daughter to SMCH, Silchar where her medical examination was done. Police brought her and victim to the Court wherein their statement U/S 164 Cr.P.C were recorded. She further deposed that later on, her victim daughter told her that when she was playing, the son of the accused had assaulted her by means of a lathi on her head. She also stated that at the time of occurrence, the age of victim was 7 years and was studying in class I at Tractor tilla.

She stated in her cross examination that the house of the accused is adjacent to their home. She also stated that when she was brought to the Court for recording statement U/S 164 Cr.P.C. the villagers were present along with her and she gave statement before Magistrate as tutored by the villagers and she does not remember the contents of the statement made before the Magistrate.

11. So, from the statement of prime witness i.e. the victim PW.1 it appears that at the relevant time she went to house of the accused to play with the son of the accused and the son of the accused in course of playing assaulted her with a lathi and thereafter the informant lodged the case against the accused. PW.2 the informant also stated the same facts that

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victim went to the house of accused and was playing with his son and after returning as the PW.2 found the victim crying she informed the matter to the neighbors who took her to PS and got an FIR written and later on victim reported her that the son of the accused had assaulted her by means of a lathi.

- 12. So, from the above analysis of the statement of the victim and the evidence of the informant it appears that they did not at all implicate the accused in the alleged offence of crime. In view of the above for non implication of the accused by the prime witnesses i.e. the victim and the informant, the accused deserves to be acquitted.
- 12. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/S 342 / 363 IPC and Sec. 5(m) punishable under section 18 of POCSO Act.
- 13. In the result, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 17th day of February, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge, Special Judge,

Cachar, Silchar. Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer Gr. I

APPENDIX

- (A) PROSECUTION WITNESSES: -
- P.W. 1 victim
- P.W. 2 Lakhi Rikiason.
- (B) DEFENCE WITNESSES: NIL
- (C) PROSECUTION EXHIBITS: -
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) COURT EXHIBITS: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.