IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

Spl(POCSO)No.24 of 2019.

(U/S :366, 376 I.P.C. R/W Ses.4 of POCSO Act & U/S 6 of POCSO Act)

State -Versus-

Sri Hari Bania

S/O-Sri Giridhar Bania Village- Deb Narikali P.S- Nagaon Dist-Nagaon(Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

Learned advocate for the state : Mr. Premeswar Sarma, A N D

Learned advocate for the accused :Mr. Saidur Rahman

Evidence recorded on :12/09/19 and 20/12/19

Argument heard on :24/02/2020

Judgment delivered on :24/02/2020

JUDGMENT:

- 1. The case of the prosecution in brief is that on 05/05/2018 one Akhil Chandra Saha lodged an F.I.R. before the O/C, Kharupetia Police Station stating that on 04/05/2018 at about 12 noon Subrata Saha's 16 year old daughter Miss X(real name is withheld) went out to purchase books and thereafter, she did not return. It is also mentioned in the F.I.R. by the informant that before she left her house she dialed a phone number to one Siba Chand asking a phone No.8638484740.
- 2. On the basis of the said F.I.R., Police registered a case. In the course of investigation, Police got the statement of the victim recorded in the Court and also got the medical of the victim done. On completion of the investigation Police submitted charge sheet against the accused Hari Bania in sessions triable Officen.
- 3. The committing Magistrate committed the case to this Court. On his appearance before this Court, the written charge U/S 366, 376 I.P.C. read with Section 4 and 6 of POCSO Act was explained and read over to the accused to which the accused pleaded not quilty.

4. Points for determination:

- (i) Whether on the date of occurrence the accused kidnapped Miss X for marriage or sexual intercourse with her?
- (ii) Whether on the same date and time the accused committed rape on Miss X and thereby committed an offence U/S 376 I.P.C. read with Section 4 of POCSO Act?
- (iii) Whether on the same date and time the accused committed aggravated penetrative sexual assault on Miss X?

REASONS AND DECISION THEREON

- 5. In the course of trial, the prosecution examined PW1 Akhil Chandra Saha, PW2 Sandip Saha, PW3 Siva Chanda and PW4 victim Miss X.
- 6. PW1 Akhil Chandra Saha has stated that during the incident one Subrata Saha and his wife were out of their house for treatment of cancer of Subrata Saha at Calcutta. At that time their daughter Miss X went on missing. Later, it was known to him that Hari Bania kidnapped the victim girl. Later Police recovered the victim girl.
- 7. PW2 Sandip Saha is a seizure witness and in his presence Police seized one School certificate.
- 8. PW3 Siva Chanda has stated that on the day of the incident the victim came accrosed with him and she asked his mobile and dialed a number and talked someone through his mobile phone. On the same day evening he learnt from Akhil Saha that Miss X remained untraced. Thereafter, Akhil Saha took him to Police Station and gave the phone number to whom Miss X had phoned to Police.
- 9. PW4 Miss X has stated that one day he dialed a wrong number. One person received her that call and he was the accused Hari Bania. Since then the accused started to phone her. While her father and mother were away due to treatment the accused came and identified himself as her maternal uncle and thereafter, she was taken to Tezpur where she was kept for 4/5 days. Police recovered her from the place of occurrence of her captivity. Ext.3 is her statement during investigation and Ext.3(1) and Ext. 3(2) are her signatures.
- 10. In cross-examination, she admitted that before the Police and the Court she deposed that there had been a love affair between the accused and

her and at her own sweet will she left with the accused and they got married. She also stated that she was asked to say like to Police and the Court by the accused. While she was taken to Tezpur and during her stay at Tezpur she did not state anything to others. In cross-examination, she further stated that she did not confirm whether Hari Bania is her maternal uncle or not through her other maternal uncle. It has also come in her evidence that she has total five maternal uncles of her own.

- 11. The accused person denied the indictments.
- 12. Heard argument advanced by the learned counsel for the sides.
- 13. With Ext.2, I.O. in this case seized one registration certificate issued by Board of Secondary Education, Assam against the Miss X and as per the said registration certificate the date of birth of the victim is 10/06/2001. In her statement which has been exhibited as Ext.3 before this Court, the victim recorded her age as 17 year and she stated that one day she became acquainted with the accused through mobile and a friendship grew up between them. One day the accused came from Guwahati to Bhebarghat and she also came out to Kharupetia and thereafter, both of them went to Tezpur and stayed in the house of uncle of the accused and they got married and they started to live like husband and wife. Thereafter, both of them visited Kampur, Nagaon and Goalpara finally, they returned to Nagaon. Police searched them out and brought to Mangaldai. In her evidence the victim stated that the accused introduced himself to her as her maternal uncle and thereafter, she was taken to Tezpur. This fact is not available in her statement made in the Court. She also did not state in her evidence as to why she was taken to Tezpur. She has five number of maternal uncles, but she did not ask them anything about the accused, who claimed to be her maternal uncle. The victim is not a girl of tender age. She is physically and mentally matured though her

age was below 18 year as per matriculation certificate. It has also not come in her evidence that she was forced to follow the accused.

- 14. It was held in S. Varadarajan -VS- State of Madrass reported in AIR 1965 SC 942 that --- But when the girl(who though a minor had attained the age of discretion and is on the verse of attaining majority and is a senior College student) from the house of the relative of father where she is kept, herself telephoned the accused to meet her at a certain place and goes there to meet him and finding him awaiting with his car gets into that car of her own accord and the accused takes her to various places and ultimately to the Sub Registrar Office where they get an agreement to marry registered and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused, but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stress of imagination be said to have "taken" her out of keeping of her lawful guardianship, i.e. the father. The fact of her accompanying the accused all alone is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him whereever he went is of course implicite. Under the circumstance no inference could be drawn that the accused is guilty of taking away the girl out of the keeping of her father. She was willingly accompanied him and the law does not cast upon him the duty of keeping her back and to her father's house or even by taking by telling her not to accompany him. It has come in her statement on oath made in the court during investigation that she got married with the accused and thereafter, both of them lived like husband and wife. Here no case is made out either U/S 376 I.P.C. or any other offence of POCSO Act.
- 15. In view of the ratio of the judgment stated above, the accused cannot be held guilty for the offence levelled against him. Thus, the accused Hari Bania is acquitted and set at liberty forthwith.

16.	Given under r	ny hand	and seal	of this	Court this	24 th da	ay of February	,2020

(P.K.Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

APPENDIX:

- (A)Prosecution witnesses:
- (i)PW1 Akhil Chandra Saha (ii)PW2 Sandip Saha (iii)PW3 Siva Chanda.
- (iv)PW4 Miss X.
- (B) Defence witness Nil
- (C)Exhibits:
- (i)Ext.1 F.I.R.
- (ii)Ext.2 seizure list
- (iii)Ext.3 statement of victim.

Sessions Judge, Darrang, Mangaldai.

Typed by:

Nareswar Deka Stenographer Grade-I.