Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge,

Cachar, Silchar.

Spl(POCSO) Case No. 20 / 2016 u/s 366 IPC r/w sec.4 of the POCSO Act The State of Assam

-Versus-

Bappi @ Bappi Hussain Laskar

..... accused person

Dates of evidence : 8.11.16; 21.2.17; 17.3.17; 28.4.17;

17.6.17 & 17.2.18

Date of argument: 24.10.19

Date of judgment : 4.12.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. S. Sen Gupta. Ld. advocate

J U D G M E N T

1. The brief facts of the prosecution case is that the informant Lili Begum lodged an ejahar dated 6.1.14 stating that on 22.12.13

at 5 pm when she and her husband was not present in their house then the ejahar named accused No.1 & 2 came to her house and kidnapped her minor daughter i.e. the victim and thereafter they committed rape on her . Thereafter , on 3.1.14, the informant orally informed the Kachudaram Police and police recovered her daughter from the house of accused No.1. Hence, the case.

- 2. Accordingly, on receipt of the ejehar, police registered a case being Kachudaram P.S Case No.06/14 u/s 366(A)/376/506/34 of the IPC. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person along with another namely, Manju Mia u/s 366(A)/376/506/34 of the IPC showing the accused persons as absconder.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court . The accused person namely, Bappi @ Bappi Hussain Laskar had appeared before the Court. The case against co-accused Manju Mia was filed as he was declared absconder. Thereafter, on 2.8.16, after hearing the prosecution and the defence counsel, this court was pleased to frame charges u/s 366 of the IPC r/w sec. 4 of the POCSO Act against the present accused person and its particular was read over and explained to him to which the accused pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced, during which the prosecution examined as many as, 7(seven) witnesses, which includes the informant, the victim, the Medical Officer and the Investigating Officer of the case. After closure of the prosecution evidence, the statement of the accused person u/s 313

of the Cr.P.C is recorded and his plea is of total denial and he declined to adduce any evidence in his support.

5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

6. **Point for determination:-**

- (i)Whether on or about the 22.12.13 at about 5 pm at the accused person with co-accused i.e. accused Manju Mia had kidnapped the victim, i.e. the minor daughter of the informant with intent that she would be compelled to marry her against her will or in order that she would be forced or seduced with illicit intercourse or knowing it likely that she would be forced or seduced to illicit intercourse, as alleged?
- (ii)Whether on the same date, time and place the accused person committed penetrative sexual assault upon the victim, as alleged?

Discussion , Decision and Reasons Thereof:-

- 7. In this case the prosecution side examined as many as 7(seven) witnesses to prove the case.
- 8. The P.W.1 Musstt. Lipi Begum, the informant of the case and she testified that victim is her daughter and she was aged about 17 years and about three years back while she was reading in Class VI/VII the alleged incident took place. The P.W.1 further stated that on the date of occurrence she along with her other two children went to her parents house on the occasions of death anniversary of her father and on that day her husband went out for a work to a jungle, the victim was kept in the house along with two other small children. She further added that while she was in her

parents house her husband asked her to know about the victim on the ground that she was not found in the house and thereafter they started to search the victim but failed to trace her out. The P.W.1 also stated that her one son and one daughter aged about 8 and 6 years respectively informed her that they saw two persons came to their house and they took the victim. She also stated that after 4-5 days of giving information, the mother of the informant told her that the victim was kept in the house of the accused and thereafter one Azijur along with police went to the house of accused and recovered the victim. She also stated that after recovery, the victim reported them that accused Bappi and Manju forcibly took her at first to the house of accused Bappi where she was kept for one or two days. She also stated that the houses of both the accused Manju and Bappi are in the same village. She also stated that at the time of occurrence, the victim was aged about 14 years. The ejahar is brought on record as the Ext.1

During cross-examination she stated that accused Munju Mia is only known to her and she does not know accused Bappi i.e. the present accused.

9. The P.W.2 is the victim of the case and she testified that about three years back the occurrence had taken place. She added that on the day of occurrence when her parents was absent in the house then the accused Bappi and Manju came to their house and told her that her mother fell ill and for that she need to go there in her grand mother's house to which she refused to go but they took her forcibly. She added that she was first taken to the house of accused Bappi and both of them on that night committed rape on

her . She further stated that on the following day they assured her to take her to the house of her grandmother but they took her to Kabuganj in the house of one sister of accused Manju and there she was kept for 4-5 days and there also they committed rape upon her on every night. The P.W.2 further stated that during her stay accused Manju snatched her silver necklace and sold the same and thereafter she was taken by accused Manju to his house at Namargram. She added that accused Manju had his wife and two sons in his house and one morning her maternal grandmother i.e. Nani arrived there and saw her and one Ajijur informed the police of Kachudaram and thereafter police recovered her. She also stated that after recovery she narrated the incident to her mother.

During cross-examination this witness stated that the person who has appeared in the name of accused has been brought in the court chamber, the said person has stated that his name is not Bappi. In her further cross-examination she stated that the accused present in the dock is not known to her and the accused present today did not commit any wrong or offence with her.

- 10. The P.W.3 is Allauddin Mazumder is a reported witness and his evidence has failed to support the case of the prosecution. The P.W.4 is Ashique Uddin, the father of the victim and the husband of the informant and he is not an eye witness and he too a reported witness. His evidence also failed to help the case of the prosecution.
- 11. The P.W.5 is Dr. Monalisa Deb, the Medical Officer and in her evidence she stted that on 4.1.14 she was working as GDMO., SMCH and on that day she examined the victim and after

examination she opined that the age of the individual was above 14 years and below 16 years, the evidence of recent sexual intercourse not detected, evidence of recent injury not detected on her body or genitals parts on the date of examination, evidence of pregnancy is not detected at the time of examination. The medical report is brought on record as the Ext.3.

- 12. The P.W.6 Arun Malakar and the P.W.7 -Sunil Kumar Nath , the I.Os of the case and in their evidence they have narrated the stages of investigations that they were conducted. The P.W.6 in his evidence stated that during investigation he visited the P.O, drew up a sketch map of the P.O. The said sketch map is brought on record as the Ext.5. The P.W.7 submitted the charge sheet , which is brought on record as the Ext.6.
- 13. On the other hand, the P.W.6 during his cross-examination stated that the P.W.4 did not state to him that he was reported by the victim that she was penetrative sexual assault by the accused Manju.
- 14. Appreciating the materials on record, it is found that although the informant Lipi Begum and the victim i.e. P.W.2 had implicated the accused Bappi @ Bappi Hussain Laskar apart from the other absconded accused against whom the case is filed. But, during cross-examination the victim has specifically stated that the accused person present in the dock did not commit any wrong of offence with her. The accused has also stated in his statement u/s 313 of the Cr.P.C that he is Akbar Hussain Laskar although his name is written as Bappi Hussain Lasakr @ Akbar Hussain Laskar.

- 15. It is the bounden duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt .
- 16. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges u/s 366 of the IPC r/w sec.4 of the POCSO Act against the accused person beyond all reasonable doubt.

ORDER

17. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 366 of the IPC r/w sec.4 of the POCSO Act against the accused person present today beyond reasonable doubt. As a result the accused person namely, Bapi @ Bappi Hussain Laskar is acquitted and set at liberty.

Set my hand and seal of this case on the 4th day of December, 2019.

(Mr.D.Ullah),

Sessions Judge, Cachar, Silchar.

Dictated & corrected by me;

Sessions Judge, Cachar, Silchar.

Transcribed by-

Sahid A. Laskar, Stenographer.

APPENDIX

A.Prosecution Witnesses:-

P.W.1-Lipi Begum

P.W.2-victim

P.W.3-Allauddin Mazumder

P.W.4-Ashique Uddin

P.W.5-Dr.Monalisa Deb(M.O)

P.W.6-Arun Kr. Malakar(I.O)

P.W.7-Sunil Kumar Nath(I.O)

B.Prosecution Exhibits:-

Ext.1-FIR

Ext.2-Statement

Ext.3-Medical report

Ext.4-Police requisition

Ext.5-Sketch map

Ext.6-Charge sheet.

C.Defence witnesses:- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah),

Sessions Judge,

Cachar, Silchar.