IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

Special (POCSO) Case No.-65/2018

U/S-366 I.P.C, r/w Section-5 of the POCSO Act.

State

- Versus -

Sri Ajoy Satnami

: Accused person.

Present:

Md. A. Rahman, AJS Special Judge, Nagaon.

Appearance & particulars :-

For the State : Sri M.J. Neog, Ld. Special Prosecutor.

For the accused person : Md. A. Rahman, Ld. Advocate.

Charge framed on : 10/08/2018.

Evidence recorded on : 03/01/2019.

Date of Argument : 05/02/2019.

Date of Judgment : 05/02/2019.

JUDGMENT

- 1. The prosecution case in brief is that on Smti. Anita Rajbongshi (actual name withheld) of Village- Majgaon lodged a written Ejahar on 16/05/2018 with the O/C of Jakhalabandha Police Station alleging that about two months back while her daughter 'Miss. X' (name withheld for the sake of anonymity) went to get her examination result from the school, accused Ajoy Satnami forcibly kidnapped her and took her to far distant places and kept her confined. Taking advantage of absence of the complainant, her victim daughter made a telephonic call to her that the accused subjected her to physical and mental torture and tried to kill her by administering insecticide poison. The efforts made by the complainant along with her neighbours to recover her victim daughter went in vain. Hence this case.
- 2. On the basis of the written Ejahar, Jakhalabandha P.S. Case No.-64/2018 was registered u/s-366(A)/307 IPC. ASI Mridul Debnath was entrusted to investigate the case and the criminal investigation was put to motion.
- 3. During the course of investigation, police visited the place of occurrence and recorded the statements of the witnesses. He also recovered the victim girl and recorded her statement. The I/O also got her examined through the doctor and got recorded her statement u/s-164 Cr.P.C. The accused was arrested during the investigation of the case and he was sent to judicial custody. On completion of investigation, police submitted Charge Sheet against the FIR named accused Ajoy Satnami u/s-366(A) IPC, r/w Section-4 of the POCSO Act.

- 4. The case record was transferred in due course to this Special Court for trial.
- 5. Upon hearing both sides and considering the materials on record, charges u/s-366 IPC, r/w Section-4 of the POCSO Act were framed against the accused. He denied the charges and claimed to be tried.
- 6. During the course of trial, prosecution side examined the complainant and the victim girl. Considering the evidence of the victim who is the star witness, further prosecution evidence was closed. The accused was examined u/s-313 Cr.P.C. The defence plea is of total denial. The accused person has declined to adduce defence evidence.
- 7. I have heard Mr. M.J. Neog, learned Special Prosecutor as well as Mr. A. Rahman, learned Counsel for the defence. I have also thoroughly and meticulously gone through the evidence and materials on record.

8. Now the points for determination are as follows:-

- (I) Whether accused prior to two months from 16/05/2018 kidnapped 'Miss. X', the minor daughter of the complainant with an intention or knowing likely that she would be forced / seduced to illicit intercourse with any person and thereby committed offence punishable u/s-366 IPC ?
- (II) Whether the accused person having kidnapped the said victim daughter of the complainant committed penetrative assault

upon her and thereby committed an offence punishable u/s-4 of the POCSO Act ?

DISCUSSION, DECISIONS AND REASONS THEREOF

- 9. For the sake of convenience and precision, both the points are being discussed simultaneously. PW-1 'Miss. X' is the victim daughter of PW-2 (complainant).
- 10. PW-1 has testified before this court on 03/01/2019. On the said date, her age was 16 years. In her examination-in-chief, she has deposed that on 02/01/2018 she went to get her annual examination result from her school. As she could not success in her examination, as such apprehending that she would be thrashed by her father, she went to her aunt's house at Bishwanath Chariali. At that time, accused Ajoy Satnami was at his work place in Hyderabad. She loved him and forced him to take her to his house. Her mother lodged the case suspecting that the accused had kidnapped her. While she was returning to her house from Bishwanath Chariali, police found her at Hatbor. Police also got her medically examined through the doctor. She has clearly stated that Ext.-1 is her statement before the Magistrate which she gave being offended with the accused. Ext.-1(1) to Ext.-1(4) are her signatures.
- 11. PW-2 has deposed that the age of her daughter is 16 years. She also deposed that on 02/01/2018, her daughter went to get her annual examination result of Class-VIII. As she failed in the examination, she apprehended that her father would thrash her and she fled away to her aunt's house at Bishanath Chariali. She was staying there for five months. There was love affairs between her

daughter and the accused. After two months of the occurrence, PW-2 was informed by the aunt of PW-1 that she was at her house. Initially, she lodged one missing entry at the Police Station when her daughter became missing. PW-2 has categorically stated that she lodged the Ejahar against the accused out of suspicion as he had love affairs with her daughter.

In cross-examination, she has reiterated that she lodged the case on suspicion on the accused.

- 12. Now, from the evidence of PW-1 who is the star witness, it is clear that accused Ajoy Satnami did not take away or enticed away her to Bishwanath Chariali. She has also not stated anything that the accused committed sexual intercourse with her. Be it mentioned here that the statement u/s-164 Cr.P.C. is not a substantive piece of evidence which may be used only for corroboration and contradiction of the witnesses. Here in this case, PW-1 in her Ext.-1 statement stated that the accused took her to aunt's house at Bishwanath Chariali where they were staying for 15 days sharing physical relation. But PW-1 at the time of deposing before this court has not made any of the said allegations against the accused. Therefore, when PW-1 does not support her version made vide Ext.-1 to be true rather contradicts stating that the same was made being offended with the accused, it is difficult to act upon Ext.-1 as genuinely made.
- 13. In view of the above, it is held that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Accordingly, the accused stands acquitted on benefit of doubt.
- 14. The bail bond shall remain in force for another 6(six) months

in the spirit of section 437(A) Cr.P.C.

15. The Sessions case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 5th day of February, 2019.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.