# IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

# **Special (POCSO) 43/2018**

# State of Assam

-Vs-

Utpal Kakati.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused : Mr. Madhab Ch. Narzary, Learned Advocate.

Date of Evidence : 26-03-19: 25-04-19.

Date of argument : 26-04-19. Date of judgment : 26-04-19.

# **JUDGMENT**

The prosecution in brief is that on 23-09-18, informant Smti. Nita Nath lodged an FIR with the In-Charge of Khagrabari O.P. alleging that on 15-08-18, the accused took away his niece victim-'A' through inducement. On the basis of the FIR, Dimakuchi PS Case No. 91/18, U/S 366 IPC R/W Section 6 of POCSO Act was registered. After completion of investigation police submitted charge-sheet U/S 366/493 IPC against the accused Utpal Kakati.

- 2. In consideration of the submission of the learned counsel for both the parties and the materials on record and having found sufficient grounds for presuming that the accused had committed offence under Section 366 I.P.C., charge was framed there under and the ingredients of charge under Section 366 I.P.C., were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution in order to prove its case examined the following 3 (three) witnesses.

PW1- Smti. Nita Nath.

PW2- The Victim (A).

PW3- Dr. Sujay Karmakar.

- 4. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
- 5. Situated thus, the point for determination in the instant case are set up as follows:-
  - (I) Whether the accused kidnapped victim 'A' with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry him against her will or that she might be forced or seduced to illicit intercourse with the accused, and thereby committed an offence punishable under Section 366 IPC.?

#### **DISCUSSION, DECISION AND REASON FOR DECISION:**

6. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsel Mr Madhab Ch. Narzary. Learned defence Counsel has argued that the ingredient of Section 366 I.P.C., have not been established in the present case.

- 7. Before appreciating the argument put forward by learned counsel for both parties, I would like to discuss the evidences adduced by the prosecution.
- 8. PW1 is Smti. Nita Nath, informant of this case and aunt of the victim. In her evidence PW1 had deposed that on 15-08-18, the victim eloped with the accused. The victim had love affairs with the accused. In this connection PW1 had lodged the FIR. Ext.-1 is the FIR. Ext.-1(1) is the signature of PW1. In cross-examination PW1 had stated that the victim had been continuing conjugal life with the accused peacefully. After elopement the victim got married with the accused socially. PW1 had no allegation against the accused.
- 9. PW2 is Victim-A. In her evidence she had deposed that on 15-08-18, she eloped with the accused and solemnized marriage with him. She had love affairs with the accused. Later on her maternal aunt lodged the FIR. Then she surrendered before the police alongwith the accused. She was medically examined by the police and was produced before the Court. PW2's statement had been recorded by the learned Magistrate under Section 164 Cr.P.C. Ext.-2 is the statement. Ext.-2(1) and 2(2) are the signatures of PW2. In cross-examination PW2 had revealed that she went with the accused on her own volition. She had been continuing her conjugal life with the accused peacefully.
- 10. PW3 is Dr. Sujay Karmakar. In his evidence he had deposed that on 24-09-18, he examined the victim at Udalguri Civil Hospital and on examination he found no marks of violence, approximate age eighteen to nineteen (18-19) years and USG abdomen shows normal echofeature of organs. Ext.-3 is the medical report. Ext.-3(1) is the signature of PW3. Cross-examination had been declined by the defence.
- 11. On appraisement of the evidences on record, it appears that there is no evidence that victim was forcibly taken away by the accused. Both PW1

and PW2 are the principal and material witnesses of the case. Both of them have not adduced any incriminating evidence against the accused person. As per the evidence of PW1, the maternal aunt of the victim, the victim had love affair with the accused. PW1 in her cross-examination has revealed that the victim had been continuing conjugal life with the accused peacefully. Corroborating the evidence of her maternal aunt, PW2, the victim has also deposed in her evidence that she eloped with the accused and solemnized marriage with him. She had love affairs with the accused. PW2 in her cross-examination has revealed that she went with the accused on her own volition. She had been continuing her conjugal life with the accused peacefully. With regard to age of the victim it appears from the medical report that the approximate age of the victim is eighteen to nineteen (18-19) years. As such the victim was major at the time of occurrence and as such she was capable of giving a valid consent. Thus, there is no evidence to show that the accused kidnapped the victim from the custody of her lawful quardianship with intent to force or seduce her to illicit intercourse with him or with any other person. Therefore, the ingredient of offence under Section 366 IPC is not made out against the accused person.

- 12. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 366 I.P.C. against the accused Utpal Kakati.
- 13. Situated thus the point for determination is decided in the negative and against the prosecution.

#### <u>ORDER</u>

14. In the result, the accused Utpal Kakati is found not guilty under Section 366 I.P.C., and acquitted of charge under Section 366 I.P.C., and set with liberty forthwith.

15. Bail bond executed by the accused Utpal Kakati and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

16. Judgment signed, delivered and pronounced in the open court today the  $26^{th}$  day of April, 2019.

# **Dictated and Corrected**

(N.Talukdar) Addl. Sessions Judge Udalguri (N.Talukdar) Addl. Sessions Judge Udalguri

# IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI.

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# **APPENDIX**

(A) Prosecution Exhibits:

Ext.-1 : FIR

Ext.-2 : Statement of Victim-A, U/S 164 Cr.P.C.

Ext.-3 : Medical Report.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Smti. Nita Nath.

PW2- The Victim (A).

PW3- Dr. Sujay Karmakar.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.