IN THE COURT OF SPECIAL JUDGE :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Special Judge, Sivasagar.

Spl. (P) Case No. 37 of 2017, U/S 366 IPC, R/W Section 4 of POCSO Act 2012 (Arising out of Amguri P.S. Case No. 08/2017)

State of Assam

-Vs-

Sri Akash Tanti ...... Accused

**APPEARANCE:** 

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D.K. Gohain, Advocate

(Legal Aid Counsel)

Date of framing Charge : 25.07.2017
Dates of Evidence : 21.09.2017
Date of S/D : 16.11.2018
Date of Argument : 16.11.2018
Date of Judgment : 16.11.2018

## <u>JUDGMENT</u>

- 1. Prosecution case in brief is that on 24.01.2017, informant Smt. Lakhi Chowra lodged an FIR with O/C, Amguri P.S. alleging, inter alia, that on 16.01.2017, at about 9 PM, her daughter victim 'M' (name withheld) got missing from their house. Non-finding her, they have searched the victim in different places, but could not trace her out and presently her whereabouts is not known.
- 2. On receipt of the FIR, Amguri P.S. Case No. 08/2017, U/S 366 (A) IPC was registered and started investigation. During investigation, victim was recovered and she was medically examined and recorded her statement in the

court u/s 164 Cr.P.C. Accused was arrested and forwarded to court for judicial custody. On completion of investigation, submitted Charge-Sheet against the accused U/S 366 (A) of IPC.

- Upon submission of Charge-Sheet, vide order dated 11.07.2017, learned Chief Judicial Magistrate Sivasagar, by complying the provision of Section 209 Cr.P.C. has committed the case for trial before the court of Sessions with the accused in Jail custody. Accordingly accused Akash Tanti was produced before this Court for trial. Upon perusal of the materials on record and by holding that accusation falls under POCSO Act, 2012, case was reregistered as Spl. (P) Case No. 37 of 2017.
- 4. Upon taking cognizance on the charge sheet and after hearing both the sides, charge has been framed u/s 366 IPC and Section 4 of POCSO Act, 2012 against the above named accused person to which he pleaded not guilty. During trial, prosecution side has examined three witnesses viz. the victim and her parents. Defence adduced no evidence.
- 5. Statement of the accused is recorded u/s 313 Cr.P.C. and after hearing both the sides, this Court proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- 6. I have heard argument of learned Apecial P.P. Mr. Srimanta Gogoi and Mr. D.K. Gohain, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

## 7. <u>POINTS FOR DETERMINATION ARE</u> -

- (I) Whether on 16.01.17, at about 9 PM, accused kidnapped or abducted the victim 'M'? If so, what was the intention of the accused person behind such kidnap?
- (II) Whether on 16.01.17 and thereafter, the accused has committed penetrative sexual assault on the victim 'M'?

## **DECISION AND REASONS THEREOF**

8. PW 1 Smt. Lakhi Chowra, the informant as well as mother of the victim in her evidence deposed that on 16.01.2017, at about 9 PM, her Spl. (P) Case No. 37/2017 Page 2 of 6

daughter victim 'M' whose date of birth is 29.06.2002, got missing from their house. Non-finding her, they have searched for the victim but failed to get her whereabouts. On 24.01.2017 she lodged one FIR at Amguri P.S. Exbt. 1 is the said FIR. PW 1 further deposed that on 05.05.2017, police recovered the victim from the house of the accused. On the next day she met the victim in the Police Station and on asking, victim told her that for last three and half month, she was with accused at Seleng Bagan area at the house of relative of the accused. Victim also stated that she cannot say how she went with the accused. Victim also stated that she had love affairs with the accused for last six months. In her cross by defence PW 1 stated that her daughter victim 'M' read upto Class-V in Bagan L.P. School. She has not submitted any document to show her age either to police or in court. FIR was written by others. She cannot say about the contents of the FIR. She has not mentioned the reason for delay in lodging the FIR. She denied that on the date of missing her daughter, she rebuked her badly and for this she left her residence. Her daughter works in local small Tea Estate. PW 1 further stated that victim did not state before her that accused has taken her or kept her forcibly.

9. PW 2, the victim 'M' in her evidence deposed that accused is known to her being neighbour. She has love affairs with the accused. On 16.01.2017, at about 9 PM she eloped with the accused as she had some quarrel with her mother. On the same night, they went to the residence of brother of accused at Seleng Tea Estate. They stayed there for about three months. After three months of her stay at Seleng, she and accused performed marriage at Mandir and returned to the residence of accused. PW 2 further deposed that they made physical relation at the residence of the accused. After three days of her stay at the residence of accused, police recovered her and brought to Police Station. Her mother is aware of her stay at the residence of accused. Presently she is living with her parents. In cross victim admitted that she went with the accused on her own. She has performed marriage with the accused. Accused did not force her to stay with him and also did not keep her confined. While staying at Seleng Tea Estate, she used to move around.

She denied that on the date of elopement, her age is above 18 years. She has stated her age on assumption.

- 10. PW 3 Sri Ashok Chowra, father of the victim also deposed in similar line of PW 1 stating that on 16.01.2017, at about 9 PM, his daughter victim 'M' got missing from their house. Non-finding her, they have searched for the victim. After failing to get her whereabouts, on 24.01.2017 his wife lodged one FIR at Amguri P.S. On 05.05.2017, police recovered the victim from the residence of accused Akash Tanti. On the next day, he went to P.S. and met the victim. On asking, victim told him that for last three months, she was with accused at Seleng Bagan area. Victim also said that she cannot say how she went with the accused. Presently victim is living with him.
- 11. From the above evidence on record, particularly from the evidence of PW 2 the victim, it appears that having love affairs with the accused, on the day of occurrence, i.e. on 16.01.2017, she had some quarrel with her mother and out of anger, on that day, at about 9 PM, she eloped with the accused on her own and stayed at the residence of the brother of accused at Seleng Tea Estate for about three months and there she performed her marriage with the accused at Mandir and thereafter both of them returned to the house of accused. In her cross, PW 2 admitted that she went with the accused on her own and accused did not force her to stay with him. PW 1 and PW 3, who are the parents of the victim simply deposed that due to nonfinding the victim in their house on 16.01.2017 and after failing to get her whereabouts, on 24.02.2017, PW 1 lodged one FIR at Amguri P.S. On 05.05.2017, police recovered the victim and on asking, victim stated that she cannot say how she went with the accused. So from their evidence, it appears that none of them deposed anything against the accused involving him with the alleged offence of kidnap. Their evidence clearly shows that accused did not kidnap or abduct the victim, rather victim on her own eloped with the accused and subsequently entered into marriage with the accused.
- 12. On the next charge regarding commission of penetrative sexual

assault, from the evidence of PW 2 the victim, it appears that while giving statement in court she has not deposed anything about of sexual relation with accused. In her evidence the victim nowhere stated that accused has committed sexual intercourse with her without her consent. Victim admitted that at the time of elopement, she was aged above 18 years of age. Hence any such relation with consent cannot be treated as offence.

- 13. Considering all above, I am of the opinion that prosecution has failed to prove the charge u/s 366 IPC read with Section 4 of POCSO Act, 2012 against the accused Akash Tanti. As such, accused Akash Tanti is acquitted from the charge u/s 366 of IPC read with Section 4 of POCSO Act, 2012 and set at liberty forthwith.
- 14. As the accused is in Jail, no order is passed U/S 437 of Cr.P.C. for securing release of the accused from Jail.
- 15. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357-A Cr.P.C.
- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 17. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 16<sup>th</sup> day of November, 2018 Sivasagar.

Special Judge, Sivasagar:

## <u>APPENDIX</u>

1. <u>Prosecution witnesses</u>:

PW 1 – Smt. Lakhi Chowra (Informant)

PW 2 - (Victim)

PW 3 - Sri Ashok Chowra

2. <u>Defence witnesses</u> - None

3. <u>Court witnesses</u> - None

4. Exhibits by prosecution -

Exbt.1 - FIR

Exbt.2 - Statement of the victim given u/s 164 Cr.P.C.

Special Judge, <u>Sivasagar</u>: