# **HEADING OF JUDGMENT IN SESSIONS CASE**

District :- Goalpara.

#### IN THE COURT OF SPECIAL JUDGE AT GOALPARA.

Present:- Sri S. Hazarika, A.J.S.

Special Judge, Goalpara.

Special Case No. 28/2019.
U/s.366(A)of the IPC R/W Section 4 of the POCSO Act.

State -vs-

## 1. Imdadul Hoque

..... Accused.

### Ld. Advocates appeared:-

For the State :-Sri N. K. Nath, Addl. Public prosecutor.

For the accused :-Mr. W.Ali, Advocate.

Date of evidence :-26/09/2019

Date of argument :- 26/09/2019

Date of judgment :- 30/09/2019

## <u>JUDGMENT</u>

1. The prosecution story in brief is that an FIR has been lodged by one Mobarak Ali alleging inter alia that on 24.04.2019 at about 7:00 P.M. the accused kidnapped his minor daughter aged about 17 years 9 months. After repeated searches she could not be recovered and accordingly, he prayed for taking necessary action.

- 2. On receipt of the FIR O/C , Dudhnoi P.S. registered the case U/S.366(A) I.P.C. and later on, section 4 of the POCSO Act was addeded. During the courses of his evidence he seized one Birth Certificate. The victim was recovered and her statement was recorded U/S.164 Cr. P.C. through the Court. Medical Examination of the victim was done. The witnesses were examined. After completion of investigation submitted Charge Sheet U/S.366(A)/376 of I.P.C. read with section 4 of the POCSO Act.
- Accused faced trial. The copies of relevant documents were furnished. Upon hearing both parties this Court framed charges U/S.366(A) of IPC R/W Section 4 of the POCSO Act. The contents of the charge was read over and explained to which, the accused, pleaded not guilty and claimed to be tried.

#### 4. POINTS FOR DETERMINATION ARE :-

- i) Whether the accused on 24/04/2019 at about 7:00 P.M. kidnapped the victim who was a minor girl with intent to have illicit intercourse with her?
- ii) Whether the accused committed penetrative sexual assault upon the victim?
- 5. In the instant case the prosecution side examined two witnesses and thereafter, the statement of the accused was recorded U/S.313 of Cr.P.C. wherein the accused pleaded not guilty and denied the circumstances against him.

# 6. <u>DISCUSSIONS, DECISIONS AND REASONS</u> THEREFORE.

- **7.** In the instant case the prosecution examined two witnesses. Among the witnesses PW 1 is the informant and PW2 is the victim of the alleged incident.
- **8.** In order to prove the charges against the accused the prosecution is required to prove that the victim is a minor girl who

was induced or kidnapped by the accused and thereafter had sexual penetrative assault upon her .

**9.** PW1 is the informant who stated that at the time of incident his daughter was at about 19 years. The incident occurred five months earlier. His daughter went out and she was kidnapped. Later on, he lodged the F.I.R. The Police recovered her daughter and give zimma to him. Ext.1 is the FIR.

In his FIR the informant stated that his daughter was a minor girl aged about 17 years 9 months but in his evidence he stated that his daughter was a major girl aged about 19 years at the time of the occurrence. Further, in his evidence stated that his daughter went out with the accused and later on, she was recovered by Police. The evidence of the witness remained silent as to inducing his daughter to go with the accused or forcefully kidnapped the daughter of the informant. Therefore, the evidence of the witness could not implicate the accused having committed the offence.

**10.** PW2 is the star witness of the case who stated that five months earlier she went with the accused and stayed in the house of his sister at Guwahati. She further alleged that the FIR was lodged by his father due to misunderstanding. The Police recovered her from Guwhati and she gave her statement in the Court. Ext.2 is her statement.

The evidence of the victim shows that she is 19 years old at the time of the occurrence and therefore, she was not a minor at the time of occurrence. She further remained silent that the accused had kidnapped her or forcefully taken her to Guwahati rather, she stated that she went with the accused out of her own free will. The witness remained silent that the accused had committed any bad things with her. Thus, the victim herself did not support the prosecution case. Without her evidence, the prosecution case cannot stand. In view of the above, the prosecution has failed to prove that the accused had committed the offences for which he is charged with . In the result, the accused deserved to be acquitted and accordingly, he is acquitted.

- **11.** The bail bond of the accused stands cancelled after six months.
- 12. Given under my hand and seal of this Court on this 30<sup>th</sup> day of September, 2019.

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

( Sri S. Hazarika, AJS,) Special Judge, Goalpara.

Special Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara Court.

**APPENDIX** Sessions: 24/2018.

# **PROSECUTION WITNESSES:-**

**PW1-Mubarak Ali(informant)** 

Pw2-Prosecutrix.

**DEFENCE WITNESS:-**

NIL

**COURT WITNESS:-**

NIL.

# **PROSECUTION EXHIBITS:-**

Ext.1-Ezahar

Ext.2-164 Statment.

# **DEFENCE EXHIBITS:-**

NIL

**COURT EXHIBITS :-**

NIL

(S. Hazarika, AJS)
Special Judge,Goalpara.