# IN THE COURT OF SPECIAL JUDGE :: KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.41/2019
U/S.366(A) IPC & R.W
Section4 of POCSO Act

STATE OF ASSAM

Vs

Md. Sukur Ali

S/O. Md. Kashimuddin Sheikh

Vill- Shalbari P.S. Kokrajhar Dist. Kokrajhar

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P

Learned Counsel for the defence Mr. S. Pahariya

Charge framed on 17.07.2019

Evidence recorded on 30.08.2019;21.09.2019;

25.10.2019; 22.11.2019;

13.12.2019

Argument heard on 01.02.2020 Judgment pronounced on 14.02.2020

# <u>JUDGMENT</u>

1. The case of the prosecution is that xxx, the father of the victim, lodged an writen FIR at Kokrajhar Police Station alleging that on

- 13.11.2017, at about 2 PM, accused Md. Sukur Ali abducted his minor daughter xxx, from near his house.
- 2. On receipt of the FIR, a case under Section 363 of IPC was registered and after completion of the investigation, a charge sheet was laid against the accused Sukur Ali for commission of offence U/S 363 IPC read with Section 4 of the POCSO Act.
- 3. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. The case was transferred to this Court for disposal. After hearing both sides, charges under Section-366(A) of IPC, R/W Section 4 of POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial prosecution examined 5 (five ) witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

### 5. **POINTS FOR DETERMINATION**:-

- (i) Whether the accused abducted the victim, a minor?
- (ii) Whether the accused committed sexual intercourse with the victim, a minor?

#### **DECISION AND REASONS:**

- 6. Pw1 xxx, father of the victim, deposed that about 2 years back accused abducted his daughter. His daughter was a minor at that time, hence he filed an FIR. Pw 1 also deposed that his daughter was in the custody of accused for about  $1 \frac{1}{2}$  years.
- 7. In cross examination of Pw1 deposed that he lodged an FIR because he did not find his daughter in his residence. He deposed that he had not seen the accused abducting his daughter. He admitted that that his daughter is living a married life with the accused and that he does not remember the precise date of birth of his daughter.
- 8. Pw2 Md. Najir Sarkar deposed that about 1 ½ years back, accused had taken away the victim and remained away from their village for about a year. The father of the victim had lodged an FIR in this regard. He knows that presently accused and the victim are living a conjugal life and they also have a child.
- 9. Pw3 xxx, the victim, deposed that accused is her husband. She deposed that the incident occurred in the year 2017. Her father wanted to marry her to a different person but since she had a love affair with the accused, she escaped her father's house and stayed in the house of her maternal Aunt at village Harkata in Dhubri district. She stayed in the house of her maternal Aunt for about 4

months. After attending majority she informed the accused and married him. Later, her father lodged an FIR. Police produced her before the Magistrate and she had given her statement

- 10. At this stage, learned Special P.P sought leave of the Court to declare the witness as hostile which was granted.
- 11. In cross examination by Special P.P, pw 3 denied the suggestion that at the time of marriage with the accused she was less than 18 years of age.
- 12. In cross examination of Pw3 by the defence, she deposed that her date of birth is 15.2.2000.
- 13. Pw4 Md. Bural Hoque, Pw5 Md. Abdus Salam have deposed they had heard that Sukur Ali has taken away the daughter of Bokdul Ali.
- 14. The crucial evidence is that of the victim. According to the victim she married the accused on her volition and after attaining the age of 18 years. On this aspect, the cross examination of Special P.P has not been able to impeach the testimony of victim that she married the accused only after attaining the majority. Thus, the evidence on record neither establishes any ingredients of abduction nor any elements of forced sexual intercourse. On these evidence a conviction cannot be sustained.

15. In view of the above, the point for determination is answered in negative.

### **ORDER**

Accused Md.Sukur Ali is acquitted of the charge under Section 366(A) of IPC, R/W Section 4 of POCSO Act and set at liberty forthwith.

His bail bonds shall remain valid for six months.

Given under the hand and seal of this Court on this 14<sup>th</sup> day of February,2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

## <u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 Seizure list Exhibit-2 Statement

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Md. Bokdul Ali
P.W.2 Md. Najir Sarkar
P.W.3 xxx victim
P.W.4 Md. Bural Hoque
P.W.5 Md. Abdus Salam

4. <u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge Kokrajhar