Special (POCSO) (T-1) Case No. 04/2018

(Under Section 366(A) of I.P.C. R/W Section 4 of the POCSO Act)

State

Versus

Jiten Gour

..... Accused.

PRESENT: Shri D. Bhattacharjee, AJS,

Special Judge, Hailakandi.

Particulars and Appearances :-

For the State

:- Shri U.K. Das, Ld. Public Prosecutor.

For the Accused

:- Shri A.F. Choudhury, Ld. Advocate.

Dates of recording prosecution evidence: - 26.03.2018, 04.04.2018, 18.04.2018 &

03.10.2018.

Date of recording statement U/S 313 Cr.P.C. :- 15.11.2018.

Date of Argument

:- 15.11.2018.

Date of Judgment

:- 16.11.2018.

JUDGMENT

- 1. The prosecution case, in brief, is that one Champa Bhumiz lodged an FIR with the In-charge, Jamira Police Patrol Post alleging that on 1.2.2017 her minor daughter Mallika Bhumiz, a student of Class IX went to attend Saraswati Puja in her school but she did not return. Subsequently, she learnt that the accused Jiten kidnapped her daughter with the help of accused David Khasia.
- 2. On receipt of the FIR, Ramnathpur PS Case No. 28/2017 was registered under Sec. 366 of IPC and SI Sri P. Deka was entrusted to investigate the case. During investigation, police visited the place of occurrence, recorded the statements of witnesses, recovered the victim girl, got her medically

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examined and also got her statement recorded by a Magistrate under Sec. 164, CrPC. After completion of investigation submitted charge sheet against the accused Jiten Gour under Sec. 366(A) of IPC.

- 3. On appearance of accused, the Ld. Judicial Magistrate, First Class, Hailakandi in compliance with Sec. 207 of CrPC furnished copies of relevant materials to the accused and the offence being exclusively sessions triable, committed the case to this Court.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having been found sufficient grounds for presuming that the accused person has committed the offence, formal charge has been framed against him under Sec. 366(A) of IPC read with Sec. 4 of POCSO Act, 2012. The charge so framed was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution in order to prove its case examined 5 PWs. The defence plea is of total denial. The accused person was examined under Sec. 313, CrPC wherein he denied all such incriminating materials brought against him by the prosecution and pleaded innocence. The defence declined to adduce any evidence.
- 6. Heard argument of Ld. Public Prosecutor and Ld. Defence Counsel.

POINTS FOR DETERMINATION

(I) Whether on 01.02.2017 in the evening at about 2 P.M. under Ramnathpur P.S., the accused person kidnapped the victim, minor daughter of the informant, with intent that she may be or knowing it likely that she will be forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366(A) of I.P.C.?

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(II) Whether the accused person after kidnapping the victim committed penetrative sexual assault on her and thereby committed an offence punishable under Section 4 of the POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

The PW. 1, Mallika Bhumiz, the victim of this case has deposed that she used to talk with the accused over phone as the accused used to reside in the house of one David Khasia. On the relevant day, she went to school for Saraswati Puja and thereafter she went to the house of accused at Alombag, Cachar where she stayed for one day, which she had informed to her mother over telephone. Police got her medically examined and also got her statement recorded by Magistrate vide Ext. 1. She has further stated that at the relevant time, she was 17 years of age. She has further stated that she went with the accused on her own will. The accused did not commit any bad act with her.

In cross examination, the victim has stated that she wanted to marry the accused but her parents were not agreed to the same. Now, she and the accused both are major and would marry each other.

8. The PW. 2, Malati Bhumiz has stated that the victim is her sister. On the relevant day, she went to school to attend Saraswati Puja and at that time, she was reported by a boy that her sister was found missing. After 2 days, she came to know that the accused and her sister had been apprehended by the local people of Alombag. Thereafter, her mother lodged an FIR and police recovered her sister. After 2/ 3 days of her recovery, she was reported by her sister that the place where she stayed in the house of accused is a very nice place and she likes to stay there.

In cross examination, she stated that she cannot say the date of birth of her sister.

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her daughter and she is the informant. About one year back on the day of Saraswati Puja, the victim went to her school but did not return home and during search, she was informed by the people that they saw the victim and the accused going in a car. Thereafter, she lodged the FIR. On the next day, police recovered her daughter from the house of accused. On being asked, her daughter told her that she went the house of accused as she wanted to marry him and at that, she advised her daughter that she was still minor and the accused is not a man of her community and as such, she would not give her marriage with the accused.

In cross examination, she has stated that she did not see the incident and she cannot say the date of birth of her daughter.

10. The PW. 4, Dr. R. Begum has deposed that on 3.2.2017 she examined the victim and found no evidence of recent intercourse, no mark of violence on her body or private parts and the age of the victim was found above 16 years and below 18 years.

In cross examination, she has stated that the age was determined as per ossification test.

11. The PW. 5, SI Sri Putul Deka has deposed that he investigated the case and submitted the charge sheet against the accused under Sec. 366(A), IPC.

In cross examination, he has stated that the school certificate which he had seized was not verified of its genuineness. He did not examine any person from in and around the place of recovery of the victim.

12. In the backdrop of above evidence, it is appeared that the police seized one photocopy of school certificate of the victim vide Ext. 3 in which the date of birth of the victim has been shown as 5.11.1999 and as per that calculation, it is appeared that at the relevant time, the victim was more than 17 years and less than 18 years of age but most surprisingly, the Investigating

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Officer did not take any step to ascertain the genuineness of the said school certificate, nor did he produce the original of it before this Court. The Investigating Officer (PW.5) very categorically stated in his cross examination that he did not verify the genuineness of the school certificate. Therefore, it is difficult to act upon the said school certificate. Now, coming to the radiological age of the victim from the Ext. 5, medical report, it is revealed that at the relevant time, the victim was aged above 16 years and below 18 years. The proposition of law is settled that the margin of error in radiological age is 2 years in either side. Hence, if the age of the victim is taken as above 16 years, applying the principle, it is appeared that at the relevant time, the victim was aged more than 18 years. Therefore, it is held that at the time of occurrence, the victim was a major girl.

- categorically stated that on the relevant day of Saraswati Puja, the victim went to school for Puja wherefrom she went with the accused to his house but the accused did not commit any bad act with her and she slept separately from the accused. It is surfaced from the evidence that the accused is well known to the victim and if the victim on her own will went to the house of accused for roaming, the responsibility cannot be fixed upon the accused. From the above evidence, no evil intention of the accused has been found to take the victim to his house and therefore, the provisions of law under which the accused person has been charged are not at all applicable in the instant case. For the sake of argument, if it is taken as true that the victim went to the house of accused and stayed there for one night, it would not come in aid of the prosecution as in the preceding paragraph it has been held that the victim was a major girl at the relevant point of time and she on her own will went with the accused.
- **14.** Accordingly, it can be safely held that the prosecution has failed to prove its case against the accused person beyond all reasonable doubt.

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- 15. The accused person Jiten Gour is acquitted of the offence under Section 366(A) of IPC read with Section 4 of the POCSO Act. Set him at liberty forthwith.
- **16.** The bail bond of the accused person stands discharged.
- **17.** The Special (POCSO) case is disposed of accordingly.

Given under my hand and seal of this Court on this the $16^{\rm th}$ day of November, 2018 at Hailakandi.

Dictated and corrected by me:

Special Judge,
Hailakandi.
SPECIAL JUDGE
HAILAKANDI

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

<u>Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade – I.</u>

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Appendix :-

Oral Evidences:-

PW-1, Victim.

PW-2, Maloti Bhumiz.

PW-3, Champa Bhumiz.

PW-4, Dr. R. Begum.

PW-5, Sri Putul Deka.

Documentary Evidences:-

Ext.-1, Statement of victim.

Ext.-2, Seizure list.

Ext.-3, School certificate.

Ext.-4, Ejahar.

Ext.-5, Medical report.

Ext.-6, FIR Form.

Ext.-7, Sketch map of the place of occurrence.

Ext.-8, Charge Sheet.

Defence did not adduce any evidence.

Special Judge,
Hailakandi.
SPECIAL JUDGE

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