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## IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

## Spl(POCSO) case No.11 of 2019.

(U/S:366/376 IPC read with Section 4 of POCSO Act)

State
-Versus-**Sahajat Sahani**S/O Md. Ajimuddin
Village- Muslimghopa
P.S- Sipajhar
Dist-Darrang(Assam)

-- Accused.

PRESENT: Sri P.K.Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

## **APPERANCE:**

Learned advocate for the state : Mr. Premeswar Sarma,

AND

Learned advocate for the accused :Mr.N.Hussain

Evidence recorded on :25/07/19, 09/09/19 & 04/11/19

Argument heard on :25/02/2020

Judgment delivered on :25/02/2020

#### JUDGMENT:

- 1. The case of the prosecution in brief is that on 09/07/2018 one Manjula Begum lodged an FIR before the O/C, Sipajhar Police Station stating that on 03/07/2018 at about 1 p.m. her 17 year old daughter Miss X(real name is withheld) was kidnapped by the accused Sahajat Sahani from the courtyard of her house. Thereafter, she was taken to a room situated at village Garchuk, where she was raped and thereafter, she was abandoned.
- 2. On the basis of the facts stated in the said FIR, Police registered a case, enquired the matter, got the statement of the victim recorded U/S 164 Cr.P.C., medical of the victim girl was done and finally a charge sheet was submitted against the accused U/S 366(A)/376 I.P.C. read with Section 4 of the POCSO Act.
- 3. On his appearance before this Court, the written charge U/S 366/376 I.P.C. and Section 4 of POCSO Act was explained and read over to the accused to which the accused pleaded not guilty.\_

#### 4. **Points for determination**:

- (i) Whether on 03/07/2018 at about 1 p.m. the accused kidnapped Miss X for the purpose of marriage or sexual intercourse with her?
  - (ii)Whether on the same date, time and place the accused committed rape on minor Miss X as alleged U/S 376 I.P.C. as well as U/S 4 of POCSO Act?

## **REASONS AND DECISION THEREON**

- 5. In the course of trial, the prosecution examined PW1 Manjula Begum, PW2 Miss X, PW3 Mizanur Rahman, PW4 Rafik Ali, PW5 Bubul Ali and PW6 Dr. Lipika Bora.
- 6. PW1 has stated that on the day of the incident her daughter Miss X was kidnapped by the accused. She got a call from Miss X. Thereafter, she

informed the Police and Police recovered her daughter from Guwahati. It has come in her cross-examination that the FIR was lodged after one week from the date of occurrence and her brother Mizanur was present when Miss X was recovered.

- 7. PW2 Miss X has stated in her evidence that on the day of the incident when she was returning from tuition class, the accused came before her and he told her that he had some talk with her father. Therefore, he asked her to sit in his bike. She sat in his motor cycle and the accused drove his motor cycle towards, Guwahati, Garchuk. He warned her not to make shout. In a house she was kept for 7 days. She got a chance to have a mobile phone of one person and she used it and called her mother. Thereafter, she was recovered by her maternal uncle from Garchuk. She was raped by the accused during her stay with the accused.
- 8. PW3 Mizanur Rahman has stated that he was informed by Miss X's mother that Miss X was kept at Garchuk and she should be brought back. Thereafter, he informed the matter to Police and with the help of Police, Miss X was brought to her home.
- 9. PW4 Rafik Ali and PW5 Babul Ali know nothing about the incident.
- 10. PW6 Dr. Lipika Bora on 09/07/18 examined Miss X and found no injury mark on the private part of her person.
- 11. The accused person denied the indictments.
- 12. Heard argument advanced by the learned counsel for the sides.
- 13. The prosecution case is that the victim Miss X was kidnapped by the accused on 03/07/2018 at 1 p.m.; while the FIR was lodged on 09/07/2018. The informant could only learn whereabouts of her daughter

Miss X when she received a phone call from Miss X. The phone number was given to the accused and Police recovered Miss X from Garchuk, Guwahati in presence of her maternal uncle PW3 Mizanur. Till 09/07/2018 the fact of kidnapping of Miss X was kept in dark. It has not come in the FIR(Ext.1) filed by PW1 Manjula Begum that how she knew that her daughter Miss X was kidnapped by the accused Sahajat Sahani. It has come in her evidence that she was not present when her daughter was kidnapped. It has also not come in her evidence when she received the phone call from her kidnapped daughter Miss X. On 10/07/2018 Miss X was produced before the Magistrate for making her statement U/S 164 Cr.P.C where she supported the fact stated in the FIR. The medical report (Ext.3) shows that at the time of the incident she was 16 to 17 year and her vaginal swab did not indicate presence of spermatozoa. No injury mark was found in her private part. Therefore, PW6 Dr. Lipika Bora failed to give any definite opinion about the rape of the victim. The evidence of the victim girl is that she was taken in motor cycle from Mangaldai to Guwahati. But she did not make any shout. Her version is that the accused warned her not to make shout. There is no evidence that to put her quit the accused showed the victim any deadly weapon or she was intimidated by some other way. When she was picked up in the motor cycle of the accused, the accused told her that he had some talk with the father of the victim. But the accused did not proceed to the house of the victim, but went to Garchuk, Guwahati. The act of the accused did not make her alert of an danger to her, which is surprising. It has also come from the order sheet that on 10/07/2018 the victim was produced in the court for recording her statement U/S 164 Cr.P.C. after she was recovered by the Police and her maternal uncle PW3 Mizanur. Therefore, an influence from the side of the informant while making the statement before the Court at the time of the investigation cannot be ruled out.

14. From the foregoing discussion, it can be held that the accused may be innocent. The case in hand appears to be a case of elopement of two

lovers from the respective houses and thereafter a free maxing up between them. There is no confirmatory evidence regarding the age of the victim at the stage of age of more than 17 years. At the stage of a girl with the age of 17 year she gets sufficient knowledge to speculate what is bad and what is good and also thinks about her future.

- 15. It was held in Shyam and another -VS- State of Maharashtra reported in MANU/SC/0427/1995-- Normally, her statement in this regard would be difficult to dislodge, but having regard to her conduct, as also the manner of the so called "taking", it does not seem that the prosecutrix was truthful in that regard. In the first place, it is too much of a co-incident that the prosecutrix on her visit to a common tape, catering to many, would be found alone, or that her whereabouts would be under check by both the appellants/accused and that they would emerge at the scene abruptly to commit the offence of kidnapping by "taking" her out of lawful guardianship of her mother. Secondly, it is difficult to believe that to the strata of society to which the parties belongs, they would have done unnoticed while proceeding to the house of that other. It is also held that she was a fully grown up girl may be one, who had yet not touched 18 year of age, but, still she was in the age of discretion, sensible and aware of the intention of the accused Shyam, that he was taking her away for a purpose. It was not unknown to her with whom she was going in view of her earlier proposal. It was expected of her then to jump down from the bicycle or put or a struggle and, in that case raised an alarm to protect herself. No such steps were taken by her. It seems she was a willing party to go with Shyam, the appellant on her own and in that sense there was no 'taking' out of the guardianship of her mother.
- 16. Considering the above, the accused Sahajat Sahani is acquitted and set at liberty.

- 17. However, the bail bond of the accused shall remain in force for next 6(six) months U/S 437(A) Cr.P.C.
- 18. Given under my hand and seal of this Court this 25th day of February, 2019.

(P.K.Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

## **APPENDIX:**

- (A)Prosecution witnesses:
- (i)PW1 Manjula Begum (ii)PW2 Miss X (iii)PW3 Mizanur Rahman (iv)PW4 Rafik Ali (v)PW5 Bubul Ali (vi)PW6 Dr. Lipika Bora.
- (B)Defense witness: Nil
- (C)Exhibits:
- (i)Ext.1 FIR
- (ii)Ext.2 statement of victim.
- (iii)Ext.3 medical report.

Sessions Judge, Darrang, Mangaldai.

> Typed by: Nareswar Deka Stenographer Grade-I.