## IN THE COURT OF THE ADDL. SESSIONS JUDGE (FTC), CACHAR, SILCHAR.

#### Sessions Case No.124 of 2018.

Under Section 366 of I.P.C.

Present :- Smt. Angjeeta Mahanta, AJS,

Addl. Sessions Judge (FTC),

Cachar, Silchar.

State of Assam ----- Complainant.

- Versus -

Md. Moin Uddin Laskar ----- Accused person.

Appearance:-

For the prosecution :- Sri P.K. Patoa, learned Addl. P.P.

For the defence :- Sri B.I. Barbhuiya, learned counsel.

Dates of evidence :- 18.08.18 & 05.10.18.

Argument heard on :- 04.07.2019.

Judgment delivered on :- **16.07.2019**.

#### **JUDGMENT**

- 1. The prosecution case in brief is that the daughter of the informant on 19.05.2018 at around 10 a.m. went out to bring soap from nearby shop but did not return. Thereafter, the informant came to know that the accused kidnapped the daughter of the informant by his motorcycle. The informant also came to know that the accused took shelter with the daughter of the informant in the house of his sister.
- 2. Alleging as above, the informant lodged an F.I.R. with the O/C of Udharbond P.S., who registered a case and investigation commenced. In the course of investigation, the I.O. recorded the statements of witnesses and arrested the accused person. On completion of investigation, the I.O. submitted charge-sheet against the accused person u/s.366 I.P.C. read with Section 4 of POCSO Act.
- 3. Thereafter, as the offence U/S 4 of POCSO Act is exclusively triable by the Special Court, the case record along with all the documents including C.D. were sent to the Special Judge, Cachar, Silchar by the learned SDJM, Cachar, Silchar. Subsequently, learned Special Judge, after hearing both sides and perusing of the materials on record

framed formal charge U/S 366 I.P.C. against the accused person, which was read over and explained to him. The accused pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the Court of learned Addl. Sessions Judge, Cachar, Silchar for disposal.

- 4. The prosecution examined 3 (three) witnesses including the alleged victim and the informant, after which the prosecution evidence was closed. On closure of the prosecution evidence, the accused person was not examined u/s.313 Cr.P.C. as learned Court found no necessity to record his statement and sent back the case record to the learned Sessions Judge for registering the case as Sessions Case instead of Special POCSO Case. The learned Sessions Judge on 12.11.2018 converted the case into Sessions Case from Special POCSO Case and made over the case record to the Court of learned Addl. Sessions Judge for disposal. On 14.06.2019 case record has been received on transfer from the Court of learned Addl. Sessions Judge for disposal.
- 5. Heard Mr. P.K. Patoa, learned Addl. P.P. for the prosecution and Mr. B.I. Barbhuiya, Ld. Defence Counsel.

### 6. **Point for Determination :-**

Whether the accused person kidnapped or abducted the victim in order that she may be compelled to marry a person against her will or that she may be forced or seduced to illicit intercourse or knowing it to be likely that she would be forced or seduced to illicit intercourse, as alleged?

### <u>Discussion of Evidence, Decision with Reasons Thereof</u>

7. PW-1 Islam Uddin Laskar, the informant and father of the victim, deposed in his evidence that the accused is his own brother's son. At the relevant time of occurrence his victim daughter went to a shop and did not return home. As the victim did not return, PW-1 informed police and lodged an FIR against accused Moin Uddin on suspicion. Thereafter, police recovered the victim from the house of elder sister of the accused situated at Bowalipar, Hailakandi. Police got the statement of the victim recorded by Magistrate. On being asked PW-2 did not tell anything regarding the occurrence to PW-1.

In his cross-examination the PW-1 stated that he filed the ejahar against the accused on mere suspicion. His daughter does not have any illicit relation with the

accused nor she had any physical relation with him. PW-1 does not have any grievance against the accused relating to the incident.

8. The alleged victim of the case was examined as PW-2. In her deposition, she stated that accused is her cousin and at the relevant time of occurrence she went to Hailakandi without informing her family members at the house of her cousin sister Saira Begum. As she went there without any information, her father suspected that she eloped with the accused and filed this case. Thereafter, on the same date her father along with the police recovered her from the house of Saira Begum.

In her cross-examination, the PW-2 stated that she did not have any physical relation with the accused so she refused to undergo medical examination. She further stated that she has no grievance against the accused.

9. PW-3 Moriam Begum, the mother of the victim deposed in her evidence that at the relevant time her daughter went away from her house without informing them and as the accused used to come to their house, her husband suspected the accused and on suspicion her husband lodged the FIR against the accused. Subsequently, they came to know that the victim went to the house of Saira Begum at Hailakandi and thereafter police recovered the victim from the house of Saira Begum.

In her cross-examination, the PW-3 stated that the accused did not take her daughter from the house and she does not have any grievance against the accused.

10. After going through the evidence discussed above it appears that the FIR was lodged by the informant (PW-1) on mere suspicion and the PW-1 also deposed that his daughter (PW-2) stated to him that she does not have any illicit relation with the accused nor she had any physical relation with him. PW-1, PW-2 and PW-3 also deposed that they do not have any grievance against the accused. PW-2, the victim also corroborated the version of the informant, her father that she did not have any physical relation with the accused and as she went to Hailakandi without informing her family members, they suspected that she (PW-2) eloped with the accused. PW-3, the mother of the victim also stated that the accused did not take her daughter from the house.

11. The victim (PW-2) in her statement recorded U/S 164 Cr.P.C. stated that she was aged about 17 years old and had a love affair with the accused and as because her father wanted to solemnize her marriage with another person; she called the accused and they went to Hailakandi. Even though the victim stated her age to be of 16/17 years at the time of deposing before the Court and the PW-1 in the FIR also stated that the victim was of 16 years of age at the time of occurrence, it can be said that she was of the age of consent and very much capable of realizing the nature and consequences of her action. In this regard reference can be made to a decision of the Hon'ble Apex Court reported in **Shyam & another V. State of Maharashtra: 1995 CRL.L.J 3974**.

- 12. In the result, I hold that the prosecution has failed to prove its case against the accused person beyond all reasonable doubt. Consequently, the accused is acquitted of the offences u/s.366 I.P.C. He be set at liberty forthwith.
- 13. The Bail bond shall remain in force for a further period of six months from today in view of Section 437A Cr.P.C.

Given under my hand and seal of the Court on this the  $16^{\text{th}}$  day of July, 2019.

Addl. Sessions Judge (FTC), Cachar, Silchar.

Dictated & corrected by me.

Addl. Sessions Judge (FTC), Cachar, Silchar.

Dictation taken & transcribed by Sujit Kr. Das.

# IN THE COURT OF ADDL. SESSIONS JUDGE (FTC), CACHAR, SILCHAR

Sessions Case No. 124 of 2018. **APPENDIX** 

(A) PROSECUTION WITNESSES: -

P.W. 1 Islam Uddin Laskar.

P.W. 1 — Islam Uddin Lasi P.W. 2 — Victim. P.W. 3 ` — Moriam Begum.

(B) DEFENCE WITNESSES: - NIL

(C) PROSECUTION EXHIBITS: -

Ext. 1 - FIR.

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) COURT EXHIBITS: - NIL

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Addl. Session Judge (FTC), Cachar, Silchar.