

IN THE COURT OF THE SPECIAL JUDGE ::::::::::::::: HAILAKANDI

Special (POCSO) Case No. 27/2018.

U/S - 366(A)/376 of the IPC read with Sec. 4 of POCSO Act

State

- Versus -

Alim Uddin Mia @ Monua Mia Accused.

PRESENT :- Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State : - Sri U.K. Das, Ld. Public Prosecutor.
For the accused person : - Sri K.M. Nurul Alom, Ld. Advocate.

Dates of recording evidence : - 01.02.2019 & 07.03.2919.

Date of recording statement u/s 313, CrPC : - 11.03.2019.

Date of Argument : - 11.03.2019.

Date of Judgment : - 11.03.2019.

JUDGMENT

1. The prosecution case, in brief, is that on 04.04.2015 the informant Badal Das lodged an ejahar with the O/c, Algapur Police Station alleging that on 03.04.2015 at about 1 PM the minor daughter of the informant i.e. the victim was going to the house of her maternal uncle alongwith her younger sister namely Suparna Rani Das and while they reached near the school namely Success Academy at Chandail, the accused person Monua Mia

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alongwith 2/3 other unknown persons appeared there and forcefully kidnapped the victim in a vehicle and then Suparna Rani Das, the another daughter of the informant immediately came back to the house and reported the incident. Thereafter, the informant made vigorous search to find out the victim but could not find her out.

2. On receipt of the ejahar, the same was registered as Algapur Police Station Case No. 95/2015 under Sec. 366(A) of the IPC and accordingly, police started investigation of the case.

3. During investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses including the informant, got the victim medically examined and also got her statement recorded by the Magistrate and after completion of investigation having been found prima facie case laid the charge sheet against the accused person Alim Uddin Mia @ Monua Mia under Sec. 366(A) of the IPC.

4. On appearance of accused person, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.

5. After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Alim Uddin Mia @ Monua Mia under Sec. 366(A)/376 of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.

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6. In the instant case, the prosecution has examined 2 Nos. of Pws including the victim and the informant o of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

7. Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION :-

(I) Whether the accused person on 03.04.2015 at about 1 PM at village Mohanpur Pt. V under Algapur PS kidnapped the victim Shantana Rani Das, the minor daughter of the informant to to with him or another person with intent that she may be or knowing that she will be forced or seduced to illicit intercourse, as alleged?

(ii) Whether the accused after kidnapping the victim, committed rape on her, as alleged?

(ii) Whether the accused committed penetrative sexual assault on the victim, as alleged ?

DISCUSSION, REASONS AND DECISION THEREOF :-

8. The PW. 1, the victim has deposed that she had love affair with the accused and out of that, she eloped with the accused on her own will and thereafter, she got married the accused and has been living with him. Her father filed the case as

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he was not agreed upon her marriage with the accused. It is further deposed by the victim that police got her medically examined and she also made statement before Magistrate vide Ext. 1, wherein Ext. 1(1) is her signature. At present, she is the mother of a child, out of the wedlock with the accused and at the time of incident, she was aged 18 years.

9. The PW. 2, Sri Badal Das, the informant, has deposed that about 2 years back one day in the morning, his daughter i.e. the victim went to school alongwith his another daughter Suparna but after sometime, Suparna returned home and reported that the accused kidnapped the victim and accordingly, he lodged the FIR vide Ext. 2, wherein Exts. 2(1),2(2) and 2(3) are her signatures. After 15/20 days, police recovered the victim and he took zimma of the victim from the court but after 15 days of taking zimma of the victim, the accused again kidnapped her and thereafter, he did not file any case.

In cross examination, the informant has stated that earlier, he deposed in this court in connection with the same matter in Sessions Case No. 76/2017. It is further stated by the witness that he can not say whether the victim on her own will eloped with the accused or not.

10. In the instant case, the prime witness is the victim and her evidence bears much significance to prove the alleged commission of the offence by the accused. The victim in her evidence has unequivocally divulged that at the relevant time, she went with the accused on her own will, out of love affair and thereafter, she married the accused and has been living with him as

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husband and wife and out of their wedlock, they have been blessed with a child and at the relevant time of incident, she was 18 years old. It has also been made clear by the victim that as her father was not agreed upon her marriage with the accused, he lodged the case. Though the informant i.e. the father of the victim has implicated the accused person with the commission of the crime, alleged but it has come out from his evidence that from the court, he took zimma of the victim and took her to his house but subsequently, again the accused took her and thereafter, the informant did not maintain any relationship with the victim.

11. When the victim has not implicated the accused person in her evidence with the commission of the alleged crime and since the victim being major went with the accused at the relevant time and is presently leading her conjugal life with the accused happily as his wife having a child, I do not find it appropriate to entangle the accused person with the guilt of commission of the crime alleged.

12. ***Accordingly, the accused person Alim Uddin Mia @ Monua Mia is acquitted of the offence under Sec. 366(A)/376, IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.***

13. The bail bond of the accused person stands discharged.

14. Send a copy of this judgment to the District Magistrate, Hailakandi.

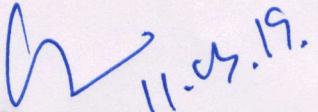
15. The Special (POCSO) case is disposed of accordingly.

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16. Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 11th day of March, 2019.


Special Judge, Hailakandi.

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Dictated and corrected by me :-


Special Judge, Hailakandi.

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Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer
Grade I.

Appendix :-

Oral evidences :-

PW. 1, The Victim.

PW. 2, The informant Badal Das.

Documentary evidences :-

Ext. 1- Statement of the victim under Sec. 164, CrPC.

Ext. 2- FIR.

Defence did not adduce any evidence.

Special Judge, Hailakandi.
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