#### IN THE COURT OF SPECIAL JUDGE :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

Spl. (P) Case No. 10 of 2019 u/s 366/376(3) IPC & Section 4 of POCSO Act, 2012 (Arising out of Demow PS Case No. 69/2019)

State of Assam

-Vs-

Sri Uttam Saora ..... Accused

**APPEARANCE:** 

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Bhaskar Gogoi, Advocate

(Legal Aid Counsel)

Date of framing Charge : 08.04.2019
Dates of Evidence : 29.05.2019
Date of Argument : 29.05.2019
Date of Judgment : 29.05.2019

#### <u>JUDGMENT</u>

- 1. Prosecution case in brief is that on 13.02.2019, informant Sri Bablu Saora lodged an FIR with O/C, Demow PS alleging, inter alia, that on 11.02.2019, at about 6 PM in the evening, his younger sister victim 'M' (name withheld), aged about 15 years was kidnapped by accused Uttam Saora by enticing the victim and confined her in his house and forcibly committed rape on her. However on the next day victim was recovered from the house of the accused.
- 2. On receipt of the FIR, Demow P.S. Case No. 69/19 u/s 363/376(3) IPC read with Section 4 of POCSO Act, 2012 was registered and investigated.

During investigation, victim was medically examined and also got her statement recorded u/s 164 Cr.P.C. Accused was arrested and forwarded to Court for judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the accused u/s 363/376(3) IPC, read with Section 4 of POCSO Act, 2012.

- 3. Since the offence u/s 4 of POCSO Act is exclusively triable by the Court of Special Judge, as such, accused Uttam Saora was produced before this Court for trial. Upon receipt of the charge sheet, cognizance of offence was taken and after furnishing copy to the accused, vide order dated 08.04.2019, charges u/s 366/376(3) IPC, read with Section 4 of POCSO Act, 2012 has been framed against the above named accused person to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses viz. the informant, victim and her mother as PW 1, PW 2 and PW 3 respectively.
- 4. Considering the nature of evidence of PW 1 to PW 3, further evidence is closed. Examination of accused u/s 313 Cr.P.C is dispenses with. I proceed to dispose the case by applying powers u/s 232 Cr.P.C and without calling the accused to enter into defence. Accused faced the trial as UTP.
- 5. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. Bhaskar Gogoi, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

## POINTS FOR DETERMINATION ARE

- 6. (i) What was the age of the victim on 11.02.2019?
  - (ii) Whether on 11.02.2019, at about 6 PM, accused kidnapped or abducted the victim? If so, what was the intention of the accused behind such kidnap/abduction?
  - (iii) Whether on 11.02.2019 or thereafter, accused committed aggravated penetrative sexual assault/rape on the victim?

## DECISION AND REASONS THEREOF:

7. PW 1 Sri Bablu Saora, the informant and elder brother of the

victim, in his evidence deposed that Victim 'M' read up to class IX and left her studies. His present age is 20 years. His sister victim 'M' is 2 years younger than him. On 12.02.2019, at evening hours, on returning home from Arunachal Pradesh, he came to know that his sister victim 'M' is at the residence of accused Uttam. On knowing this, he went to the house of accused and saw her sitting in that house. On his asking, victim stated him that she was called by accused Uttam to his house on the previous day and she stayed in his house for one night. On this there was a quarrel between him and the accused and they both assaulted each other. At that time accused was married having two child. His wife died few days back of this incident. After making quarrel with the accused, he brought back the victim. PW 1 further deposed that on this incident, he has called one village meeting and as asked by the meeting, he filed the FIR. On his asking, his sister victim 'M' told him that while staying at the residence of accused, he did not misbehave her or did not commit any misdeed with her. In his cross he stated that he has no knowledge if his sister victim 'M' has love affairs with the accused. He admitted that his sister victim 'M' on her own went to the house of accused.

8. PW 2 the victim in her evidence deposed that accused presently she is aged about 15 years. She read up-to class VIII and left the school in the year 2018. Her date of birth is 05.09.2003. Exbt. 1 is the school certificate showing her date of birth (proved-in-original). It is deposed by PW 2 that on 11.02.2019, at about 9 PM, without informing her family members, she went with accused Uttam Saora to his house and stayed in his house for the night. On the next day morning her brother Bablu Saora and her aunt Sumitra Mirdha came to his house and brought her back to her house. A village meeting was also held. After few days, her brother filed this case. Police took her for medical checkup and also in Court. She gave her statement in Court vide Exbt. 2. From Court, she went with her mother and brother and informed them the fact of this case. In her cross-examination, victim admitted that she went with the accused on her own for watching TV in his house. Accused did not commit any physical

relation with her. While giving statement in court, she deposed as tutored by her mother. Accused Uttam did not use force on her for going with him. She has no objection for acquittal of the accused from this case. Accused is her brother in law in relation.

- 9. PW 3 Smt. L. Saora, mother of the victim in her evidence deposed that victim is presently aged about 16 years. On 11.02.2019, at evening hours, her daughter victim 'M' went to the house of accused for watching TV and did not return in the night. On the next day, her son and her sister went to the house of accused and bring her daughter back. At that time, accused was married having two children. His wife died few days back of this incident. A village meeting was also called and as asked by the meeting, her son filed the case. She further deposed that on her asking, her daughter victim 'M' told her that while staying at the residence of accused, accused did not misbehaved her. In her cross examination, she stated that her daughter victim 'M' might be aged about 18 years. She admitted that her daughter victim 'M' on her own went to the house of accused. She has no objection for acquittal of the accused from this case.
- 10. Basing on the above evidence, so far age of the victim is concerned, from the evidence of PW 2, the victim, it appears that she claimed her present age as 15 years. Victim stated her date of birth as 05.09.2003 and produced one school certificate (Exbt. 1) showing her date of birth (proved-inoriginal). However the medical examination report of the victim which is attached with charge sheet, disclosed that on the date of examination, the victim was above the age of 18 years. Mother of the victim admitted at the time of incident, victim might be aged about 18 years. Informant also claimed that victim might be aged about 18 years. Thus having contradictory materials on record, I would like to rely on the age as determined by medica examination which get support from the mother of the victim. As such, I hold that on the alleged date of incident, victim was above the age of 18 years.
- 11. So far allegation of abduction is concerned, the victim deposed nothing against the accused involving him with the alleged offence of

abduction. In her evidence the victim nowhere stated that accused by using force or by inducing took her with him. Her evidence shows that accused being a relative, without informing her family members, she went with the accused on her own for watching TV and stayed in the house of accused for the night. This fact was corroborated by PW 1 and 3. Thus it is clear that there is no incriminating material against the accused so far allegation of abduction is concerned. Merely taking the victim to his house and allowing her to stay in his house cannot be an offence. In the instant case, ingredients of offence u/s 366 IPC or even any other minor offence like section 363 are totally missing.

- So far charge of rape/penetrative sexual assault is concerned, from the evidence PW 2 the victim, it appears that she has categorically denied regarding commission of rape/penetrative sexual assault by the accused while keeping her with him in his house. In her evidence the victim nowhere stated that accused has even committed sexual assault on her. There was no material in the evidence of PW 1, PW 2 and PW 3 regarding rape/aggravated penetrative sexual assault by the accused. The allegation brought against the accused was not supported by the victim herself. She further admitted that she gave her statement u/s 164 Cr.P.C on being tutored by her mother. It may be noted here that FIR was lodged after 8 days of the alleged incident, which creates a doubt on genuineness of the incident.
- 13. Considering the above evidence on record, I am of the opinion that prosecution has failed to prove the ingredients of charges u/s 366/376(3) IPC and Section 4 of POCSO Act 2012 against the accused Sri Uttam Saora. As such, accused Sri Uttam Saora is acquitted from the charges u/s 366/376(3) IPC and Section 4 of POCSO Act, 2012 and set at liberty forthwith. Issue release order accordingly.
- 14. No order is passed u/s 437-A Cr.P.C. as accused is in Jail custody.
- 15. Considering the facts of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.

- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 17. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 29<sup>th</sup> day of May, 2019 at Sivasagar.

Special Judge Sivasagar

# **APPENDIX**

- 1. Prosecution witnesses:
  - PW 1 Sri Bablu Saora (Informant)
  - PW 2 Victim 'M'
  - PW 3 Smt. Lajoni Saora
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution -
  - Exbt. 1 School Certificate on age.
  - Exbt. 2 Statement of the victim given u/s 164 Cr.P.C.

Special Judge <u>Sivasagar</u>