IN THE COURT OF SPECIAL JUDGE ::KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.18/2017 U/S.366 IPC, R/W Sec.4 of POCSO Act

STATE OF ASSAM

Vs

Hafiz Anowar Hussain S/O. Abdus Sabhan Sheikh village Khankhowapara P.S. Bilasipara District- Dhubri (Assam)

...... Accused person.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghose, Special P.P.

Learned Counsel for the defence Mr. A.S. Talukdar

Charge framed on 21.09.2017

Evidence recorded on 12.06.2019; 12.02.2020

Argument heard on 02.03.2020 Judgment pronounced on 02.03.2020

<u>JUDGMENT</u>

1. The case of the prosecution is that on 06.07.2017 one xx, father of the victim, lodged a writen FIR at Bagribari P.S alleging that accused Haziz Anowar Hussain has abducted his daughter xxx, aged about 15 years and has taken her to Guwahati by train. On receipt of the FIR, a case under 120B/366/34 IPC was registered and in the course of

investigation, the victim girl was recovered. After completion of the investigation, a charge sheet was laid against the accused Haziz Anowar Hussain for commission of offence U/S 366 of IPC read with Section 4 of the POCSO Act.

- 2. The accused person was summoned and on his appearance, copies of the relevant documents were furnished to him. After hearing both the sides charges U/S 366 of IPC, R/W Section 4 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed to trial. The case was thereafter transferred to this Court for trial.
- 3. In the course of trial, prosecution examined 5 witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

POINTS FOR DETERMINATION:

- (i) Whether the accused abducted the minor daughther of the informant for purpose of sexual intercourse?
- (ii) Whether the accused committed sexual intercourse with the victim?

DECISION AND REASONS:

5. Pw1, xxx, the victim, deposed that the incident took place about two years ago. At the time of incident she was reading in Hafizi Chokapara Madrasa, Lakhiganj. She was staying in the Hafizi Chokapara Madrasa Hostel. At that time, after her examination at Hafizi Madrasa the vacation had started. After examination, she requested her teacher, the accused, to take her to the house of her aunt at Hojai. When she visited there, she had informed her mother but she had not informed her father and hence when her father found her missing in her house he lodged the FIR out of misunderstanding. Pw 1 deposed that when she received phone call from her father she immeiately returned from Hojai.

In cross examaination, Pw1 deposed that she got permission from her mother before visiting the house of her aunt with the accused. She deposed that accused did not kidnap her rather she requested him to take her to the house of her aunt. She also deposed that accused did not misbehave or molest her and took her to the house of her aunt at Hojai nor did the accused commit rape on her.

- 6. Pw2 victim's father deposed that her daughter was staying at Hafizi Chokapara Madrasa Hostel and after appearing her annual examination she came home for her vacation. One day she was found missing in his house and she could not be traced out inspite of vigorous search in every possible place and hence he lodged the FIR. Later, his wife told him that their daughter has gone with the accused to Hojai in his cousin sister's house. Pw 2 deposed that he had the telephone number of the accused and hence he immediatly contacted with him and on the next day he brought his daughter.
- 7. Pw3 xxx victim's mother deposed that about 2 years back her daughter was studying in Madrasa. She was then aged about 15 years. One day her daughter informed her that she wants to visit her paternal Aunt at Hojai and the accused will take her to Hojai. She gave the permission and accordingly her daughter went to Hojai alongwith the accused. Her husband was not aware of her daughter visit to Hojai and accordingly he lodged an FIR. Later, she called her daughter and asked her to return. Thereafter, her daughter returned from Hojai.
- 8. (At this stage, learned Special P.P sought leave of the Court to declare the witness as hostile. Permission granted after due consideration) In cross examination by Special P.P, pw 3 deposed that at about 1-30 AM she came to know that her daughter was missing. Her husband lodged the FIR in the morning hours next day. After 3-4 days they came to know that their daughter is at Hojai and police brought her from Hojai.
- 9. In cross examination by defence, Pw3 has deposed that accused did not abduct her daughter.

- 10. The evidence of Pw4 Md. Abu Bakkar Siddique and Pw5 Md. Noser Ali have no bearing on the prosecution in view of the evidence tendered by pw1, pw 2, and pw 3.
- 11. The evidence on record, does not reveal any ingredients of the offence of kidnapping or for the offence of penetrative sexual assault. The material prosecution witnesses have totally exonerated the accused of any wrong doing. On these evidence, no conviction can be sustained. Hence, the points for determination are answered in negative.

ORDER

Accused Hafiz Anowar Hussain is acquitted of the charges under Section 366 of IPC , R/W Section 4 of POCSO Act and set at liberty forthwith.

His bail bonds shall remain valid for six months.

Given under the hand and seal of this Court on this 2nd day of March,2020.

Dictated by

Special Judge Kokrajhar Special Judge Kokrajhar

<u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 Statement u/s 164 CrPC

Exhibit-2 FIR

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 xxx victim

P.W.2 victim's father

P.W.3 victim's mother

P.W.4 Md. Abu Bakkar Siddique

P.W.5 Md. Noser Ali

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4.<u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Special Judge Kokrajhar