IN THE COURT OF ADDITIONAL SESSIONS JUDGE,

SONITPUR, ASSAM

Spl POCSO No. 03 of 2019

U/S 363 of IPC, r/w Section 4 of POCSO Act

State of Assam

-vs-

Sri Khemraj Gurung

..... Accused person

Present:

Sri Dipankar Bora, MA, LL.M., AJS, Additional Sessions Judge, FTC, Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P.

For the defence

: Mr. P. Upadhyaya, learned Advocate

Dates of recording Evidence: 13.02.2020

Date of Argument

: 13.02.2020.

Date of Judgment

: 13.02.2020.

JUDGMENT

- 1. The prosecution case in brief is that on 25.01.2018 the informant namely, Smti Toya Devi lodged an FIR with the OC, Sootea Police Station stating inter alia that on 24.01.2018 at about 5 PM, the accused kidnapped her 15 and 1/2-year-old daughter (name is withheld) from a place near her house and since then her whereabouts is not known.
- 2. Receiving the same, the police registered a case and investigated the matter. After
- The accused person in due course, appeared before this court to face trial. The copies of the charge, taking note of the materials furnished. POCSO Act, 2012, the charges were accordingly framed against him, which on being read over and explained, the accused pleaded not guilty.
 - 4. During trial, the prosecution examined two witnesses in all including the informant and the alleged victim. Looking into the evidence as adduced by both these vital witnesses, more particularly, the evidence of the victim-PW 2, the prosecution declined to examine the

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remaining witnesses contending that further evidence would not strengthen its case. Taking note of the materials on record, the prosecution evidence was closed. As no incriminating evidence was found against the accused, his examination u/s 313 CrPC was dispensed with. The case was thereafter argued by both the sides.

Points for determination

- i) Whether the accused on the day of the alleged occurrence kidnapped the victim who is minor under the age of 18 years from the lawful guardianship of the informant, her mother?
- ii) Whether the accused on the day of the alleged occurrence committed penetrative sexual assault on the victim who is below the age of 18 years?

Discussion, Decision and Reasons thereof

- PW 1 is the informant and the mother of the alleged victim. She stated that the incident took place about 2 years back. The victim-her daughter was 18 years old at that relevant time. She stated that the victim had eloped with the accused and out of anger, she lodged the 'Ejahar' against him. Both the accused and the victim then got married and a female child was later born out of their wedlock. She stated that she had lodged the FIR, which she proved that as Ext. 1, out of misunderstanding.
- 6. PW 2 is the victim. She stated that she had love affair with the accused for which she eloped with him on her own wish. Her mother thereafter, out of anger lodged the 'ejahar'. She stated that she and the accused got married and both of them now are living happily. According to her she was 18 years old at that relevant time and the accused is innocent. She proved her statement recorded u/s 164 CrPC. as Ext.2.
- 7. Thus from the evidence of both these witnesses, more particularly from the evidence of the victim-PW2, we do not find any material against the accused to convict him on the offences charged against him. The prosecution has failed to prove its case. As such I acquit the accused and set him at liberty forthwith. His bail bond stands discharged. The provision u/s 437-A CrPC is not complied with after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 13th day of February,

2020.

Additional Sessions Judge, FTC,

Biswanath Chariali, Sonitpur, Assam. Addl. Sessions Judge

included Charlan, Somipur

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Smti Toya Devi (Informant)

PW2- Victim.

Exhibits proved by the prosecution witnesses:

Ext.1- FIR

Ext. 2- Statement of the victim recorded u/s 164 CrPC.



Witnesses examined by the Defence:

None

Documents exhibited by the Defence:

None.

Addl. Sessions Judge