IN THE COURT OF DISTRICT & SESSIONS JUDGE: CACHAR; SILCHAR

SPL. POCSO CASE NO .13of 2014

Corresponding Sessions Case No. 103/14

(U/S 366/376 IPC.)

Present:-Shri K. Choudhury, LL.M., Special Judge, Cachar, Silchar.

State of Assam	Complainant.
-Versus-	
ImamUddin S/O Sunahar Ali Laskar, Merab Ali Lane, Madhurbond, Silchar	Accused
Charge framed on:-	14.12.2015.
P.Ws. examinedon: -	.7.2.16, 26.4.16, 22.6.16, 16.7.16.
Statement of accused recorded	under section 313 Cr.P.C :25.7.2016.
D.Ws examined on:	18.02.17
Judgment pronounced and delivered on:	15.3.17.
Learned Counsel Appeared	
For the State:	

JUDGMENT

1. Prosecution case as it evolves from the record is thaton21-03-12 at about 10.00 a.m. the minor daughter of the complainant aged about

16 years, here in below referred as victim, went out from their house but for non-returnof her in the afternoon search was being made. During the search it could be learnt that the accused kidnapped the victim. Accordingly FIR was lodged on 24-03-13 with a prayer for recovery of the victim. The same was registered as Silchar P.S. case No. 575/13 U/S 366-A IPC. During investigation the victim was recovered. She was medically examined and she also gave statement U/S 164Cr.P.C. stating that on the date of occurrence at about 3.00 p.m. while she was walking on the road the accused forcibly gagging her mouth got her into an auto rickshaw and told her that she would be taken to the house of his maternal uncle. Accordingly she was taken. Thereat she was kept for three days. The allegedly confined her fastening in a room. The accused also removing her clothes had physical relation with her against her will. On 24th March/2013 she was recovered by police. The doctor opined her age as above twenty. On completion of the investigation the I.O. submitted charge sheet against the accused U/S 366 IPC.

2. Learned S.D.J.M.(S) Silchar after procuring the attendance of the accused furnished copies of all relevant documents and committed the offence fixing 08-09-14 for appearance of the accused before the Sessions Court. On the date so fixed accused remained absent without any step and warrant was issued. However, subsequently on many occasionshe remained absent with steps. Subsequently on 24-08-15 he appeared. He again started to make default in his appearance. Thereafter vide order dated 10-12-15 warrant was issued. On 14-12-15 the accused appeared. It is to be mentioned here that predecessor in office vide order dated 08-09-14 asked to register the case as POCSO case. Accordingly the case was registered as

Special POCSO Act. This Court after hearing both sides, and perusing of the material on record framed formal charges against the accused U/S 366/376 IPC. The charges were read over and explained to which the accused pleaded not guilty. Hence trial began.

3. To prove the case prosecution examined as many asfive witnesses including the M.O. andthe I.O.Defence pleasas taken by way of putting suggestion in the evidence of P.W. 1, the mother of the victim, is that she deposed falsely. In the cross-examination of P.W2, the father of the victim, defence put suggestion to the effect that the victim had love affairs with the accused and she eloped away voluntarily with the accused and under the pressure of members of Bajrang Dal she had to give statement before the Magistrate against the accused. In cross-examination of P.W.3 i.e. the victim the defence took the plea that the victim at the material time was twenty years of age or above, and she had love affairs with the accused, but her parents in collusion with her and other organization filed this case with false allegation on the ground that the accused belonged to other community, which she categorically denied. The defence also took the plea by way of putting suggestion that the victim was not taken by the accused and was not kept confined in any house by the accused and the accused did not commit sexual inter course with her which she also categorically denied. The accused during his examination U/S 313 of Cr.P.C. stated that the victim was recovered by police from in front of his house. He however denied that he took her and had sexual inter course with her. The accused also denied that he was found absconding and stated that on the strength of pending W/A he was arrested for about seven months after the alleged incident in connection with G.R. case bearing No. 2085/09 U/S 498-A IPC. He in hisdefence examinedhimself as D.W.1 and his mother D.W.2.

- 4. Now, point for decision is as to whether, under the facts and circumstances of the case, the accused committed any offence of kidnapping/abduction and rape as charged U/S 366/376 IPC.
- 5. To decide the above I have heard learned counsel of both sides at length and perused the entire evidence on record. Findings, decision and reasons thereof are given below:
- 6. P.W.1 Shefali Rani Das, the mother of the victim a Gr-IV employee of BSNL deposed that on one day in the year 2013 while she returned from BSNL office at about 3-30 p.m. found the victim was not in the house. On search it could be learnt that one boy of Mahutpara, Silchar took away the victim from the road. At that time her husband was at Lala under Hailakandi district. About three days after that she lodged the FIR, the Ext-1. After that police recovered the victim from the house of the accused at Mahutpara situated near Fatokbazar. On query the victim told that the accused gagging her mouth forcibly took her. At the material time the victim appeared HSLC but after the incident although she passed HSLC but out of fear of the accused discontinued her study.
- 7. P.W. 2 the father of the victim deposed that on 21-03-13 he was at Dholai in the house of her paternal aunt. On the following morning he received telephonic call to the effect that the victim was missing. He returned home and found the victim in the Silchar P.S. On query the victim told that on the date of occurrence at about 3.00 p.m. while she was proceeding towards her friend's house the accused forcibly took her by an auto.

- 8. PW. 3 -The victim deposed that in the year 2012 she appeared HSLC examination but could not come out successfully. In the month of March,2013 at one afternoon at about 3.00 p.m. while she was proceeding towards her friend's house on the way the accused got down from an auto and pulled her and took her by the auto in one house, might be of his maternal uncle. He confined her in a room, made her naked forcibly and had sexual intercourse with her against her will. He kept her for three days and all the three days he committed sexual inter course against her will. After that she was recovered by police at the instance of her mother. On the date of the alleged incident her father was in the house of his paternal aunt. After four days her father met her. During investigation she was produced before the doctor for medical examination. She gave statement before the Magistrate. Ext-2 is her statement. According to her she did not give any statement to the doctor. She discontinued her study just after admission in the H.S. 1st year. She further deposed that she knew the accused as an auto driver since her schooling but she had no talking terms with him.
- 9. PW. 4,Dr. Priyanka Singha deposed that on 25-03-13 she examined the victim. She recorded the history as disclosed by the victim. According to the history as recorded, the victim had love affairs with the accused since previous two months. The accused was a married person having two daughters. On 21-03-13 the victim asked the accused to take her away. So the accused came with an auto and took her to his relative's house at Rongpur, Silchar and stayed there for three days. On 23-03-13 the accused took her to his house. She had sexual intercourse with the accused on many times and both of them wanted to be get married. On 24-03-13 she was brought by police. She had taken bath and changed her cloth

Hymnalold tears found present at 4'0 clock and 6'0 clock position. Result of X-ray showed the epiphysis of wrist joint, elbow joint and shoulder joint as appeared and fused with parent bone. On the basis of physical including dental examination Laboratory and radiological examination the doctor opined that the age of the victim as about 20 years.

- 10. PW. 5— I.O. of the case deposed that on 24-03-13 while he was posted at Ranghikari TOP under Silchar P.S. the FIR (Ext-1) was lodged which was registered as Silchar P.S. case No. 575/13 U/S 366(A) IPC. He was entrusted to investigate the case.On 24-03-13 he visited Merab-Ali lane at Mahutpara, Silchar and recovered the victim from the house of Enamuddin i.e the accused. Seeing them the accused fled away. He further deposed that he recorded the statement of the victim and sent her for medical examination and also produced her before Magistrate. The accused was found absconding for many days. Ultimately the accused was arrested in connection with other G.R. case bearing no. 2085/09. The accused was also arrested in connection with the present case on 10-06-13. Ext-5 is the sketch map of the P.O. drawn by the I.O. Ext-6 is the charge sheet submitted by him.
- 11. D.W.1- is the accused of this case deposed that the victim used to be a passenger of his auto. About three years back one day she suddenly came to his house. He was not in the house. At that time his wife over telephone informed him that one girl came to their house and started quarrelling with his wife asking to meet him and to stay in the house. At that time his mother and sister Moni Begum and also his father were present. At about 3.00 p.m. police came and took away the victim. On his return from work at about 7.00 p.m. he came to know about the above from

the inmates of the house.

- 12. D.W. 2– the mother of the accused deposed that she cannot say the age of the accused who left study about ten years backwhile a student of class-V. Thereafter he started to work. About three years back the alleged incident took place. At that time accused was anauto driver who since 5/6 days prior to the alleged incident started to work as such. Before that he used to sell vegetables. On the date of alleged incident suddenly the alleged victim of this case came to their house and called the accused. She further deposed that on her query the victim told that the victim came to talk with her son. She then told the victim that her son went out for work, and asked the victim to return back. The victim then started to insist upon them to stay in the house. She further deposed that they told the victim that they belonged to Muslim community. The victim then wanted to stay in their house to start conjugal life. Thereafter wife of the accused came out and picked up quarrel with the victim. After that father of the victim came with police and took the victim. Thereafter police did not come to their house.
- During hearing learned P.P. has strongly submitted that the defence pleas are shaky in nature. In the cross-examination the defence took the plea that the victim voluntarily went away with the accused. But there is no cross-examination or suggestion about the recovery of the victim from the house of the accused. However, the accused admitted about the recovery of the victim from his house. The learned P.P. also submitted that there is no reason to disbelieve the evidence of I.O. who deposed about the absconding nature of the accused and thus this conduct under the facts and circumstances of the case is most relevant U/S 8 of the Evidence Act. Further contention is that the evidence of D.Ws cannot be

relied upon being inconsistent and do not inspire confidence in as much as their evidence are self-contradictory in nature. On the contrary learned defence counsel strongly contended that medical report reflects about love affairs and consent of the victim to go with the accused and age of the victim is opined asabout 20. Further contention is that the evidence of I.O. cannot be relied upon mainly with regard to the evidence of absconding on the ground that there was no search memo. It is also contended that the driver of the auto was not examined and no attempt was made to collect the age related certificate of the victim. According to learned defence counsel on the pressure of Bajrang Dal or other like organization a concocted case was filed against the accused. The learned defence counsel also submitted that the investigation was not done properly.

14. It is evident that at the material time the accused was a married person having two daughters. Their present age is 11 and 7 respectively. The accused although disclosed his present age as 23 on the date of his evidence. But he disclosed his age as 28 at the time of giving his statement U/S 313 of Cr.P.C. He stated that as per his disclosed age being 23 he got married at the age of ten years and he procured driving license about seven years back. According to learned P.P. the accused falsely deposed and the same can be adversely inferred against him under the facts and circumstances of the case.

In the cross-examination he stated that he received information at 7.00 p.m. and returned home at about 7-30 p.m. and he did not receive any information over telephone but received information about the coming of the victim from his neighbour Babul Hussain Laskar. This piece of evidence is totally self-contradictory in as much as he in his examination-in-chief stated that he received telephonic information from his wife about

the coming of the victim. In the cross-examination he admitted that he was arrested on the strength of W/A and his wife lodged a case against him. That being so it is very difficult to rely upon that his wife would be available in her matrimonial house when there was a pending W/A in connection with a case lodged by his wife with allegation of torture etc. The evidence of pending W/A is however corroborates the evidence of I.O. That being so it can completely be relied upon that the accused was evading police arrest at least out of fear of the pending W/A issued in connection with other case lodged by his wife. The clinching evidence that come out in the cross-examination of the I.O. that he visited the house of the accused in search of the accused thus can be relied upon. P.W.1,2& 3 being the complainant father, and the victim are found to be corroborative with regard to taking of the victim by the accused. Some omissions have been brought and proved in the evidence of I.O. to the effect that P.W.2 did not categorically state before the I.O. that on21-03-13 he was at Dholai in the house of his paternal aunt and on the following day he received telephonic call to the effect that the victim daughter was missing and on 23-3-13 he returned to his house and on query the victim told that at about 3.00 p.m. the accused took her forcibly by an auto. The I.O. however, deposed that there was mention that the victim was forcibly taken away by the accused. Therefore the above omission as confirmed by the defence, under the facts and circumstances of the case, cannot be treated as material omission. The omission as confirmed with regard to the evidence of P.W.3 that she stated before the I.O. that she was taken to the house of maternal uncle of the accused, under the facts and circumstances of the case, is also considered as not material omission in as much as admittedly she (victim) was recovered from the house of the accused, and also for reason that the victim deposed that she was perhaps was taken to the house of maternal uncle The omission about forcible making of naked is also seems to be immaterial especially when the accused has taken the plea of total denial of sexual intercourse. Although the victim denied about giving her statement before the doctor but even if it is relied upon, it cannot help the defence in any away in as much as the defence totally denied the alleged taking away of the victim by the accused and also the evidence of sexual inter course. The defence as eluded earlier sometimes took the plea that the victim having love affairs voluntarily eloped away with the accused but nothing is uttered by the accused in his entire evidence to this very effect. The evidence of the D.W.2 is contradicted by the accused (D.W.1), as according to the accused the police came to their house at about 3.00 p.m. whereas according to the D.W.2 police came there at about 11.00 a.m. Evidence of D.W.2 inspires no confidence for relying upon as it also appears that the D.W.2 intentionally tried to conceal the age of the accused deposing that she does not know the age of the accused. It cannot be relied upon that she being the mother does not know the age of her son, the accused, while she knows the age of the daughters of the accused.

15. The suggestion that the victim having love affairs eloped away with the accused rather confirmed that the victim was with the accused for the days of her missing. The conflicting suggestions as put in the cross-examination of the victim that the victim was not taken by the accused and was not kept confined in any house and the accused did not commit sexual intercourse with her has got no force in the absence of any explanation about the dealings of the accused with the victim during that period of missing. The evidence of the D.Ws that on the very day of recovery the victim went to the house of the accused appears to be totally false for the

reasons discussed earlier. The defence in the cross-examination of all the material witnesses tried to establish that at the material time the victim was aged above twenty. According to the victim and her parents i.e. P.W.1 and P.W.2. Victim was below 18 years of age. Evidence reveals that the victim at the material time just got admission in the H.S. 1st year and once she failed in the H.S.L.C. examination. In the normal course one appears in H.S.L.C. final examination at the age of fifteen plus. According to their evidence the victim has twin brother who at the time of giving evidence was studying in H.S. 2nd year. In the cross-examination of P.W.2 it is stated that he got married in the year 1992 in the month of September and around after twelve fourteen months of his marriage the victim was born. This goes to show that the age of the victim might be nineteen plus at the material time. The doctor P.W.4 also opined almost accordingly. Now question comes whether the victim voluntarily went away with the accused. She categorically denied the same. There is no contradiction in this regard except the medical evidence where the doctor wrote history. The victim denied that she gave any statement to the doctor in this regard. That being so the history as recorded by the doctor in the absence of any slightest corroborative evidence hasgot very little force especially for the reason that the defence totally denied the allegation of inter course as reflected in the history column of the Medical Report. That apart, the defence case is also not that the victim remained with the accused for 3/4 days and the accused had sexual intercourse with consent of the victim. The fact of recovery corroborated by unshaken and reliable evidence clearly establishes that the victim remained with the accused for 3/4 days. Under such circumstance natural presumption would be that the accused abducted the victim with intention of having sexual intercourse with her. According to the victim the

accused forcibly raped her against her will. Mere denial that the accused did not commit any sexual intercourse or did not abduct or kidnap her is not enough to demolish the evidence. The conduct of the accused and nature of evidence as reveals and discussed earlier clearly establishes that he with an intention to commit rape took the victim and subsequently makes a futile attempt to establish that the victim on the date of very recovery went to his house to reside with him. It is not believable that any female of adolescence would venture to implicate any person at the cost of slur upon her character, future and reputation of her family etc. It is evident that the No contradiction or any material omission could be proved in their cross-examination. Therefore mere stating their evidence as false is not enough to impeach their credibility. The defence plea being found conflicting and varying in nature in different stages as eluded earlier rather fortifies the prosecution case lending sufficient assurances to the each and every fact needed to be proved. It is not believable that any female of adolescence would venture to implicate any person at the cost of slur upon her character, future and reputation of her family etc. The corroborative evidence is thus relied upon.

16. From the above discussion, contentions and consideration of evidence in its entirety it is found to be established by reliable evidence that the victim was taken away by the accused and the victim had to stay with the accused for 3/4 days. The accused has not candidly admitted that the victim voluntarily went with him; rather he took different plea at different times and adduced evidence concealing the real facts which he could have disclosed. Further the evidence of fleeing away seeing the police also reflect his state of mind of guilty. The conduct of the accused thus as discussed earlier clearly shows that the accused with intention to

commit sexual inter course abducted the victim by some deceitful means and had sexual inter course against her will during the said period on many times.

- 17. In view of the above discussions and consideration of entire evidence on record it is held that prosecution has been able to prove its case beyond all reasonable doubtU/S 366/376 IPC Accused is thus held to be guilty of the offences. He is thus convicted accordingly. Heard the accused on the question of sentence
- Heard the accused on the question of sentence. His statements are recorded in separate sheets tagged with the case record. He has submitted for leniency on the ground that he is having aged parents, two minor daughters and there is none in the family to look after them.
- 19. Having consideration of the above and due regard to all other aspects, especially the fact that the accused even having wife and children at the material time committed such nature of offence affecting the dignity and chastity of a teenager girl, I do not find it a fit case to show much leniency and therefore convict and sentence the accusedU/S 366 IPC to undergo Rigorous Imprisonment (R.I.) for a period of three years, and also a fine of Rs. 2000/- and in default shall further undergo for a period of one month. He is further convicted and sentenced U/S 376 IPC to undergo R/I for a period of 10 (Ten) years and also shall pay fine of Rs. 5,000/- and in default he shall further under R/I for a period of two months. Both the sentences shall run concurrently. Period of custody shall be set off from the sentence.
- 20. As regards victim's compensationit is evident during trial of this case the victim vide petition no. 66/7 dated 11.4.16 prayed for compensation for an amount of Rs. 2,00,000/- stating inter-alia that for the

act of the accused she had to suspend her studies out of fear and shamefulness and as a result of which she felt that her life had been jeopardized. The petition was not disposed of. It is evident that at the material time the victim had to discontinue her studies just after admission in HS 1st Year. Having consideration of all the aspects of this case and the fact that as a result of the act, victim had to suffer both mentally and physically and will have to lead of life with slur and her future ambition also got affected, no reason is found to deny the compensation as prayed Therefore, it is strongly recommended that an amount of Rs. for. 2,00,000/- is required to be paid as compensation to the victim by DLSA, Cachar, Silchar. Secretary DLSA will take appropriate step for payment of the compensation. Copy of the Judgment along with the deposition of P.W.1,2,3 be forwarded to Secretary DLSA. Copy of the Judgment also be forwarded to the Secretary, Govt. of Assam, Political Department, for taking necessary step for payment of compensation.

21. Free copy of the Judgment be furnished to the accused as per as per the Provision of Section 363 of Cr.P.C. and a copy also be forwarded to the District Magistrate as per section 365 of Cr.P.C. Copy of the Judgment shall also be forwarded to the S.P., Cachar, Silchar.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 15th day of March, 2017.

Dictated & Corrected by me

(Shri K. Choudhury), Special Judge. Cachar, Silchar. (Shri K. Choudhury), Special Judge, Cachar, Silchar.

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR

SPL POCSO Case No. 13 of 2014. Corresponding Session Case No. 103/14 APPENDIX

(A) PROSECUTION WITNESSES: -

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P.W. 1-SmtiShefali Rani Das.
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P.W. 2- Sri Sushan Chandra Das.

P.W. 3 – SmtiSushmita Das.

P.W. 4 – Dr. Priyanka Sinha.

P.W. 5- Sri Utpal Chandra Roy.

(B) DEFENCE WITNESSES: -

D.W. 1 – Imam Uddin Laskar (accused).

D.W. 2 – Soribun Nessa.

(C) PROSECUTION EXHIBITS: -

Ext.1 - F.I.R.

Ext.1(1)— Signature of P.W.1

Ext. 1(2) -Signature of the then O/C SilcharP.S..

Ext. 2 – Statement of PW 3.

Ext-2(1) & 2(2) – Signatures of PW 3.

Ext.3–Police requisition

Ext. 3(1) - Signatures of P.W.4

Ext. 4 — Medical Report.

Ext.4(1) &(2)–Signature of PW.4,

Ext-4(3) - Signature of Dr. Y. N. Singha.

Ext.5 – Sketch map. (Under objection)

Ext-5(1) – Signature of P.W.7.

Ext. 6 — Charge sheet

Ext. 6 (1) —Signature of PW 5

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

(F) COURT EXHIBITS: - NIL

NIL.

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

(Shri K. Choudhury), Special Judge, Cachar, Silchar.

Transcribed by D. Paul, Stenographer -III