# IN THE COURT OF SPECIAL JUDGE :: :: :: CACHAR. Spl.(POCSO) Case No.28 of 2019

(U/S 366/376 IPC and Sec.6 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam ......Complainant.

#### -Versus-

Gangaram Pahari	Accused.
Charge framed on:	08.11.19
P.Ws. examined on:	10.1.20,30.1.20
Argument heard on:	10.2.20.
ludgment propounced and delivered on:-	10 2 20

### **Counsel Appeared:**

For the State : Smti. B.Acharjee, Id.Spl. PP

For the Accused : Mr. S. Sen, Advocate.

#### **JUDGMENT**

1. The prosecution case, in brief, is that the informant lodged an FIR with the Kachudaram P.S. stating the facts that on 8.03.16 at about 2 p.m. the informant went for bathing keeping her minor daughter in the house and on the way the informant could see the co accused was coming to the house of the informant. When the informant returned her victim daughter was found missing in the house. It is also alleged in the FIR that at the instigation of co accused , the accused person had kidnapped the minor daughter of the informant.

- 2. On receipt of the FIR, O/c Kachudaram PS registered a regular PS case vide Kachudaram P.S. Case No.34/16 U/S 366(A) of IPC . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet only against accused person Gongaram Pahari U/S 366/344 of IPC r/w Sec.6 of POCSO Act showing the said accused as absconder.
- 3. As the offence is U/S 366 /344 of IPC r/w Section 6 of POCSO Act being exclusively triable by the Court of Special court , Id. additional CJM Cachar, Silchar sent the case record to this court and subsequently the cognizance of the said offence was taken against the accused by this court and after procuring the attendance of the accused and after hearing both sides formal charge U/S 366 / 376 IPC and Section 6 of POCSO Act was framed by this court against the accused person. The charge having been read over and explained, the accused person pleaded not guilty and claimed to be tried.
- 4. Now, in the present case the points to be decided are :-
- (1) Whether the accused person on 8/3/16 at about 2 p.m. at Rahamannagar under Kachudaram PS had kidnapped the victim, the daughter of the informant with intent that she may be compelled to marry against her will or knowing it to be likely that she will be compelled to marry against her will or in order that she will be forced or seduced to illicit intercourse, as alleged?
- (2) Whether the accused person committed rape upon the victim as alleged ?
- (3) Whether the accused person committed aggravated sexual assault upon the victim, as alleged?

- 5. From the prosecution side as many as 2 witnesses i.e., the informant and the victim have been examined . On the submission of the ld. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 6. I have gone through the entire evidence on record and have also heard the ld.counsel for both the parties.

# **DISCUSSIONS, DECISIONS AND REASONS THERE-OF**

- 7. Now, let me discuss the evidence below to see whether the prosecution has succeeded to bring home the charges against the accused person as mentioned in points for determination.
- 8. PW. 1, Meena Turi, the informant of this case deposed in his evidence that about 3/4 years ago, one day at about 3/3.30 PM the informant was not present in her house and on her return she has not found her daughter, the victim. PW.1 made search about her with the villagers but could not find her. Accordingly on suspicion PW.1 lodged FIR with the Kachudaram PS against the accused. PW.1 further deposed that the victim girl appeared before the PS and then police informed her and she appeared at Kachudaram PS and met her victim daughter and at that time she was physically very weak. As the victim returned after long time and as such PW.1 refused to take her back.

In her cross examination PW.1 stated that she had lodged the FIR after about 6 days of the occurrence and the Kachudaram PS is about 9/10 KM away from her house. She also stated that she heard that the accused married the victim and the victim is having one child from the side of the accused and they live in the same house. She also stated that she did

not submit any paper in relation to the age of the victim either to the victim or to the court.

PW.2, the victim, deposed in her evidence that the occurrence 9. took place in the month of February in the year 2016 during Shivratri time and on that day her parents scolded and assaulted her and as such she left her house and went with the accused to Guwahati. She further deposed that she got married with the accused in a Kali Mandir at Guwahati and she stayed in a rented house with the accused at Guwahati for about one year. She further deposed that when she was having pregnancy of three months she came to Amraghat, Sachinpur in the house of the sister of the accused. She further deposed that she gave birth to a male child at Dholai PHC but after one week her said child expired. She also deposed that after two months she went to the house of the accused at Ramannagar bazar under Kachudaram PS. and came to know that her mother had lodged a case and therefore they went to Kachudaram PS. She further deposed that her mother demanded Rs. 40,000/- to withdraw the case but they could not fulfill the demand and after three/four days police came, took her to SMCH, Silchar wherein her medical examination was done and she was also brought to Court wherein hermy statement U/S 164 Cr.P.C. was recorded. Ext. 1 is the said statement wherein Ext. 1(1) is her signature. She also deposed that after recording the statement she went to the house of her in laws as per her own wish. She further deposed that at the time of occurrence she was above 18 years of age. She also deposed that she again gave birth to a female child from the side of the accused who is at present one month old.

She stated in her cross examination that herself and the accused have been living peacefully since their marriage in the year 2016 and she has no grievances against the accused.

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- 10. So, from the evidence of prime witness i.e. the victim PW.2 it appears that at the relevant time when she was major left the house as her parents scolded her and went with the accused and got married him and at present they have been living as husband and wife on being blessed with a child. PW.1, the informant, without making any specific implication to the accused deposed only that as she did not find the victim in the house after returning from her bath in the house lodged the FIR against the accused out of suspicion. So, from the evidence in its entirety of the principal witnessesthe victim and the informant, it reveals they did not at all implicate the accused in the alleged offence of crime. For non implication of the accused by the prime witnesses i.e. the victim and the informant in their evidence, the accused deserves to be acquitted.
- 11. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366/376 of IPC and Sec. 6 of POCSO Act against accused.
- 12. In view of the above, accused person is not held guilty and stand acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bonds stand discharged.

Judgment is pronounced and delivered in the open court on this the 10th day of February, 2020.

Dictated and corrected by

( Darak Ullah )
Special Judge,

Special Judge,

Cachar, Silchar.

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

# IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 28 of 2019.

# **APPENDIX**

(A) PROSECUTION WITNESSES: -

P.W. 1 — Meena Turi P.W. 2 — victim.

- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: -

Ext. 1 – statement of victim

- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) COURT EXHIBITS: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.