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

### SPL. POCSO CASE NO .25 of 2015

(U/S 366 IPC. & U.S. 4 of POCSO Act. 2012)

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

State of Assam	Complainant.
-Versus-	
Ali Hussain, S/O- Fakar Ali Bairabpur Part V P.S. Katigorah, Cachar	Accused
Charge framed on:	28.03.2016
P.Ws. examinedon:-	27.05.16; 27.06.16; 01.08.16; 28.02.17; 08.09.17;26.05.17; 03.11.17
Statement of accused recorded under section 313 Cr.P.C :- 10.11.17.	
Argument heard on:	
For the State: For the Accused:	Mr.R. M. Das,Ld. P. PMr. N. N. ThakurLearned Advocate.

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

1. In the instant case, the FIR was lodged on 06.08.2014 to the effect that on 05.08.2014 at late mid-night accused kidnapped the minor daughter of the complainant and on the following morning at about 5 a.m. the complainant was informed that his victim

daughter was kept in the house of the accused. Thereafter, FIR was lodged and the same was registered as Katigorah P.S. Case No. 298/14, U/S 366 (A) I.P.C.

- 2. During investigation the statement of the victim got recorded U/S 164 Cr.P.C. and she was also got medically examined. The doctor opined her age as above 14 years and below 16 years. On completion of the investigation IO submitted charge sheet against the accused U/S 366/344 IPC R/W Section of 4 POCSO Act,
- 3. Learned Addl.C.J.M. Cachar, Silchar after procuring the attendance of the accused furnished copies of all relevant documents and committed the offence. This Court after hearing both sides, and consideration of materials on record framed formal charges against the accused U/S 366 IPC & under Sec.4 of Protection of Children from Sexual Offences (POCSO)Act 2012. The charges were read over and explained to the accused to which the accused pleaded not guilty. Hence trial began.
- 4. To prove the case prosecution examined six witnesses including the victim. Defence plea is that at the material time the victim was a major and she at her own will went out on that night with knowledge of her mother with the accused on the ground that her marriage was settled elsewhere against her opinion. The accused during examination U/S 313 Cr.P.C. also has taken the similar plea and expressed his willingness to marry the victim and pleaded as innocent.
- 5. Now, point for decision is as to whether, under the facts

and circumstances of the case, the accused kidnapped the victim girl and committed any offence of penetrative sexual assault as charged U/S 366 IPC and Sec 4 of POCSO Act respectively.

- 6. To decide the above I have heard learned counsel of both sides at length and perused the entire evidence on the record. Findings, decision and reasons thereof are given below:
- 7. P.W.-1: Sibaz Uddin, the father of the victim deposed that about 2 years back on one night hearing alarm of the victim he woke and went out along with his another son and wife but did not find the victim. On the following morning at about 7 a.m. he was informed by one Alkas Uddin that his daughter was taken in the house of the accused and the accused wanted to marry her. Hence the FIR was lodged. When the victim was given in his custody, it was reported to him that on the night of alleged incident when she came out in response to her nature's call, the accused and one Baharuddin forcibly lifted her to the house of the accused.
- 8. P.W.-2 Ashuk Uddin deposed that on that of night of alleged occurrence hearing alarm of the victim, he woke and went out along with his mother and father but did not find the victim. On the following morning they were informed that the victim was taken to the house of the accused for marriage purpose. After 11-12 days the victim was recovered by police. When the victim was handed over to his father, on query, it was reported that she forcibly taken by accused Ali Hussain and one Kamal and others. The victim reported to him that the

accused tortured the victim and she was further threatened and asked to marry her.

- 9. P.W.3, Hukmot Ali deposed that at the relevant time he was informed by the complainant that on the previous night accused forcibly took away the victim. After few days the victim was recovered.
- 10. P.W.4, the victim of this case deposed that on the date of alleged occurrence at about 10/11 p.m. when she came out to attend the call of nature, on the way the accused along with 3 others gagging her mouth forcibly took her to his house. She refused the marriage proposal of the accused. The accused and others took her to Bihara, from there she was taken to Borkhola and then she was taken to Lailapur. During her stay in the house of the accused the accused had sexual intercourse with her.

In her cross examination she stated to the police that her age was 18 years and she had love affairs with the accused Ali Hussain who was known to her family and she wanted to get married with him and her parents settled the marriage and assaulted her and for that she over telephone informed the matter to the accused and on 05.08.14 in the night she went herself to the house of the accused which her mother saw but did not prevent. She also stated before the police that on the following morning when they came to know that her father lodged complaint, they both went to Bihara wherefrom police recovered them and brought them to Kalain P.S.

11. P.W-5 Dr. Orina Raha deposed that on 19.08.2014 on police requisition she examined the victim. She opined that the age of

the victim girl was above 14 years and below 16 years; no signs of sexual intercourse were detected nor any injury detected on her body or genitals.

12. P.W. 6 P. Jatindra Singh deposed that on 06.08.14 he was posted at Katigorah P.S. and I.C. of the P.S. Kajal Kumar Dey entrusted him to investigate the case. During investigation, he visited the P.O. recorded the statement of witnesses. On 19.08.14 both the accused and the victim appeared before the police of Kalain P.P. Accused was forwarded to the Court. The victim was got medically examined and was also produced before the Magistrate for recording her statement U/S 164 Cr.P.C. He collected the medical report and also her statement. Before that he also examined her. On completion of the investigation he submitted charge sheet.

In his cross examination he confirmed the omission as brought in the cross examination of P.Ws to the effect that P.W. 1Sibaj Uddin did not state before him that hearing alarm of the victim he woke and did not find the victim. P.W. 1 also did not state before him that he received information from one Alkas Uddin about the victim and the accused wanted to marry her. P.W. 2 Ashuk Uddin did not state before him that victim reported to him (P.W. 2) that accused tortured the victim and she was threatened and asked to marry her.

13. Exhibit-4 is the statement recorded U/S 164 Cr.P.C. of the victim where she disclosed her age as 18 years. She also disclosed that she had love affairs with the accused for which her parents having

intention to give her marriage elsewhere assaulted her. It is also stated that her parents settled her marriage elsewhere against her will and thereafter she made a telephonic call to the accused and on 5.8.14 at 11 'O" clock night she on her own went out and the same was seen by her mother. Learned defence counsel on this point strongly argued that the above contradiction falsify the evidence that the accused along with three others forcibly gagging her mouth took away the victim. On the point of the age of the victim, contention of the learned defence counsel is that in the absence of any cogent evidence, under the facts and circumstances of this case, doctor's opinion cannot be totally relied upon. It is further submitted that during the pendency of this case, marriage between the accused and the victim has been settled and the same goes to show that whatever has been stated before the Magistrate about the love affairs and her going out at her own will only to get married with the accused might be true and subsequently at the instance of her father who was previously against the marriage adduced evidence deviating from her earlier statement and other inmates of her house accordingly deposed. It is not convincing enough that in presence of the inmates of the house, the victim could be forcibly taken away by the accused and accompanied by others.

- 14. In view of the above discussions and consideration of entire evidence on record it is held that prosecution case is not proved beyond all reasonable doubt both U/S 366 I.P.C. & U/S 4 of POCSO Act or whatsoever. Accused is thus acquitted and set at liberty forthwith.
- 15. Bail bond stands discharged.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 30th day of November, 2017.

Dictated & Corrected by me

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

Transcribed by D. Paul, Stenographer -III

# IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR SPL POCSO Case No. 25 of 2015 \_APPENDIX

#### (A) PROSECUTION WITNESSES: -

P.W. 1 — Sibaz Uddin.

P.W. 2 — Ashuk Uddin

P.W. 3 – Hukmot Ali

P.W. 4 – Ruksana Begum

P.W. 5 – Dr. Orina Raha

P.W. 6 – P. Jatindra Singh

# (B) DEFENCE WITNESSES: - NIL

#### (C) PROSECUTION EXHIBITS: -

Ext.1 – FIR

Ext.1(1) – Signature of P.W.-1

Ex. 1(2) – Signature of Kajol Kr. Dey

Ex. 1(3) & 1 (4) — Signature of S.K. Dey.

Ext. 2 – Medical Report

Ex. 2(1) – Signature of Ruksana Begum

Ex. 2(2) – Signature of guardian of Ruksana Begum

Ex. 2(3) 7 2(4) — Signature of P.W. 5.

Ex. 2(5) – Signature of Dr G. Das.

Ext.3 – Police requisition.

Ext. 3(1) – Signature of P.W.-5

Ext. 4 – Statement of P.W. 4.

Ext. 4(1) to 4(4) — Signature of P.W.-4

Ext. 5 – Sketch map

Ext. 5(1) – Signature of P.W. 6.

Ext. 6 – Charge-sheet

Ext. 6(1) – Signature of P.W.-6.

# (G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

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

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