Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge, Cachar, Silchar.

Spl(POCSO) Case No. 10 / 2019 u/s 366/376 of the IPC r/w sec.4 of the POCSO Act The State of Assam

-Versus-

Jia Uddin

..... accused person

Dates of evidence : 26.9.19; 24.10.19 & 21.11.19

Date of argument : 21.11.19

Date of judgment : 21.11.19

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. A.Roy. Ld. advocate

<u>JUDGMENT</u>

1. The brief facts of the prosecution case is that the informant Soyful Ali lodged an ejahar dated 12.3.19 stating that on 5.3.19

at about 1 pm the accused had kidnapped his minor daughter and raped her several time and hence this case.

- 2. Accordingly, on receipt of the ejehar, police registered a case bing Lakhipur P.S Case No.58/19 u/s 366/376 of the IPC. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 366/376 of the IPC r/w sec.4 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court . Thereafter, on 8.5.19 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Jia Uddin has appeared before this court and on 28.3.16 after hearing the prosecution and the defence counsel, this court was pleased to frame charges u/s 366/376 of the IPC r/w sec. 4 of the POCSO Act against the accused person and its particular was read over and explained to him to which the accused pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced, during which the prosecution examined as many as, 5(five) witnesses, which includes the informant the victim of the case. After closure of the prosecution evidence, the statement of the accused person u/s 313 of the Cr.P.C is recorded and his plea is of total denial and he declined to adduce any evidence in his support.
- 5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

6. **Point for determination:-**

- (i)Whether on or about the 5.3.19 at about 1 pm the accused person kidnapped the victim, i.e. the minor daughter of the informant with intent that she would be compelled to marry her against her will or in order that she would be forced or seduced with illicit intercourse or knowing it likely that she would be forced or seduced to illicit intercourse, as alleged?
- (ii)Whether on the same date , time and place the accused person committed rape upon the victim , as alleged ?
- (iii)Whether on the same date, time and place the accused person committed penetrative sexual assault upon the victim, as alleged?

Discussion, Decision and Reasons Thereof:-

- 7. In this case the prosecution side examined as many as 5(five) witnesses to prove the case.
- 8. The P.W.1 Saiful Ali, the informant of the case and he testified that about 6 months ago , at about 12.30 pm his daughter i.e. the victim went for tuition at Chutomada, P.S Lakhipur but she did not return from tuition and accordingly he searched for her but she was traceless. The P.W.1 further added that thereafter, he came to know after two days of the occurrence that the accused Jia Uddin had taken her to Dimapur and accordingly he lodged an FIR with the Lakhipur P.S. The said FIR is brought on record as the Ext.1. The P.W.1 also stated that police arrested the accused and recovered his daughter i.e. the victim from his possession and thereafter police sent his daughter to SMCH., Silchar from her medical examination. The P.W.1 also

stated that at the time of occurrence, his said daughter was a student of Class X and at that time her age was 16 years.

During cross-examination he stated that his daughter i.e. the victim went with the accused out of her own accord and presently his daughter and the accused are living as husband and wife since the day of the alleged incident. During cross-examination this P.W.1 admitted that he has no grievances against the accused at present.

9. The P.W.2 Alkuma Bibi , the wife of the informant and she stated that about 6 months ago, her daughter , the victim went out for her tuition and she did not return to their house and they could not trace her out. The P.W.2 further added that after 10 days , police of Lakhipur P.S handed over her daughter to them and on being asked , her daughter reported them that she was in the house of accused Jia Uddin. The P.W.2 further added that at the time of occurrence her said daughter was a student of Class X and at that time her age was 16 years.

During cross-examination the P.W.2 stated that her daughter i.e. the victim went with the accused on the date of occurrence as per her own will as she was having love affairs with the accused. The P.W.2 also admitted that presently her daughter is living peacefully with the accused as his wife.

10. The P.W.3 is the victim of the case and she testified that the informant is her father . She added that about 9 months ago , the occurrence took place at about 12.30 pm. The P.W.3 also stated that the accused Jia Uddin was planning to go to Dimapur and she asked him to take her also and accordingly he took her to

Dimapur . She also stated that he kept her there in his brother's house and after two days , he married her and after her marriage, she stayed for about one week with him. She also added that thereafter the accused took her to his house at Alipur Basti under Lakhipur P.S and they came to know that her father lodged a case and accordingly she alongwith the accused appeared before the Lakhipur P.S and police took her to SMCH for her medical examination and also to the court wherein her statement u/s 164 of the Cr.P.C was recorded. The Ext.2 is the statement.

During cross-examination she stated that after the accused being released from jail, she has been residing with him in his house as his wife.

- 11. The P.W.4-Jashim Uddin and the P.W.5- Saidul Hussain , both of them are the reported witnesses and their evidence have failed to implicate the accused person with the alleged offence . However, during cross-examination the P.W.4 admitted that the victim went of her own accord with the accused and got married and the P.W.5 during his cross-examination also admitted that there was a love affair between the accused and the victim for which the victim went out with the accused of her own accord.
- 12. Appreciating the materials on record, it is found that though the informant P.W.1 alleged that the accused had kidnapped his daughter but during his deposition before the court had failed to support the said version. The victim P.W.3 has also failed to implicate the accused person with the alleged offence. She has stated that the accused married her and taken her to his house

and she lives there as his wife and the said fact is supported by her mother i.e. the P.W.2, the wife of the informant . On the other hand , the P.W.4 & 5 in their deposition admitted that there was love affairs between the accused and the victim for which the victim went with the accused of her own accord. Though, the P.W.1 & the P.W.2 have stated in their evidence that at the relevant time of occurrence the victim was a student of Class X. From the evidence on record, it is seen that although the father of the victim i.e. the P.W.1 had stated that the victim was 16 years of age but no any birth certificate or school certificate are placed by the prosecution side in respect of the age of the victim. The victim herself has stated that her age is 19 years and the alleged occurrence took place on 5.3.19.

- 13. In view of the above position, I am of the opinion that the prosecution side failed to prove that the victim is below 18 years of age at the time of occurrence. That apart, neither the victim nor any other witnesses have implicated the accused person in respect of the offence charged against the accused person i.e. the offence u/s 366/376 of the IPC r/w sec. 4 of the POCSO Act.
- 14. It is the bounded duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt .
- 15. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

ORDER

16. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 366/376 of the IPC r/w sec.4 of the POCSO Act against the accused person present today beyond reasonable doubt. As a result the accused person namely, Jia Uddin is acquitted and set at liberty.

Set my hand and seal of this case on the 21^{st} day of November, 2019.

(Mr.D.Ullah),

Sessions Judge, Cachar, Silchar.

Dictated & corrected by me;

Sessions Judge, Cachar, Silchar.

APPENDIX

A.Prosecution Witnesses:-

P.W.1-Saiful Ali

P.W.2-Alkuma Bibi

P.W.3-Victim

P.W.4-Jashim Uddin

P.W.5-Saidul Hussain

B.Prosecution Exhibits:-

Ext.1-FIR

Ext.2-Statement of the victim.

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah),

Sessions Judge,

Cachar, Silchar.