IN THE COURT OF THE SPECIAL JUDGE :::::: CHIRANG, KAJALGAON.



Special (P) Case No. 10(S)/2017

U/S 366 IPC R/W Section 4 of POCSO Act.

State of Assam

Vs.

Stephen Hembram

..... Accused

PRESENT :

Sri D.J. Mahanta, Special Judge, Chirang, Kajalgaon.

ADVOCATES APPEARED:

For the State

: Sri D. Das, Ld. Public Prosecutor

For the accused

: Sri M. Islam, Ld. Advocate

Date of evidence

: 02.11.17, 20.06.18.

Date of Argument

: 11.07.2018

Date of Judgment

: 11.07.2018

JUDGMENT AND ORDER

- Chitang, Kalaldaon
- 1. The prosecution case in brief is that on 27.04.2017, the informant Mohen Kuzur lodged an FIR before Sidli P.S. alleging that on 23.04.2017, at about 10.00 AM, Miss 'X' (name is withheld), the 15/16 years old daughter of the informant went out from home on the pretext of going to Church and went on missing thereafter. On searching, the informant came to know that his co-villager accused Stephen Hembram had taken his daughter.
- 2. After receiving the FIR, the O/C of Sidli P.S. registered a case being Sidli P.S. Case No. 15/2017 U/S 366 IPC and the O/C himself investigated the case. Accordingly, he arrested the accused, visited the place of occurrence, recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 CrPC, collected the medical report and after completion of investigation, submitted Final Report in

the case but same was not accepted by my predecessor. Accused produced from jail before this Court. My predecessor after furnishing copies of relevant documents and after hearing both sides on point of consideration of charge, framed charge U/S 366 IPC read with Section 4 of POCSO Act against accused Stephen Hembram. Charge was read over and explained to the accused to which he denied to plead guilty. Later on, accused person was released on bail.

- 3. In support of the case prosecution side examined as many as 2 (two) witnesses.
- Following witnesses are examined:-
 - (1) Sri Mohen Kujur as PW 1
 - (2) Victim as PW 2
- 5. FIR was exhibited as Ext.1 and seizure list was exhibited as Ext.2. School certificate of the victim was exhibited as M.Ext.1.
- 6. On the date of statement of defence, accused remained absent for which he was arrested and his statement was recorded U/S 313 CrPC as UTP. Defence plea is of total denial. Defence adduced no evidence.
- 7. Heard argument from both sides.

8. Now points for consideration:-

For the offence U/S 366 of IPC

1. Whether on 23.04.2017 at 10.00 AM at Padmapur under Sidli P.S., the accused kidnapped the victim, the daughter of the informant, a woman with intent (or knowing it to be likely) that she might be compelled to marry him against her will or in order (or knowing it to be likely) that she might be forced (or seduced) to illicit intercourse with him?

Chirang, Kajadoson

2. Whether after the said date at Garubhasa under Sidli P.S., the accused committed penetrative sexual assault on the victim?

DISCUSSION, DECISION AND REASONS THEREFOR:-

- 9. Now, I want to discuss and appreciate the prosecution evidence on record regarding above mentioned points.
- 10. PW 1 is the informant of this case and he is the father of the victim. He deposed that at the time of occurrence, he came to Kajalgaon market and after returning home at around 10.30 AM, did not find his daughter, the victim at home. Though he made search for her, but could not trace out her. On the following morning, he came to know that accused kidnapped his daughter. At the time of occurrence, the age of his daughter was about 15 years. After four days of missing, he found his daughter along with accused at Sidli P.S. He further deposed that the accused intending to marry his daughter, had eloped her with him. During cross-examination, he stated that he did not see the occurrence when his daughter was kidnapped by the accused.

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11. The victim who is the important witness in this case was examined as PW 2. She deposed that it was a Sunday. While she was going towards Church, accused asked her to go the river bank. She went to the river bank and accused was also there. The accused told her to go to Kokrajhar with him for enjoying mela. But instead of taking her to mela, the accused took her to his sister's house. She has a sister at Kokrajhar. The accused, taking her to her sister's house, told that he loved her and wanted to marry her. She stayed in the house of the sister of accused. His sister told them to go to Police Station. The accused did not commit any illicit act upon her. She denied marrying him and accused did not commit any sexual intercourse with her. At the time of recording her statement by the Magistrate, she stated that there was love affection between them. Her family members did not allow her to marry the accused. After the occurrence she got married with another boy. She went with the accused according to her own will and accused did not take her forcefully. She proved her school certificate as M. Ext.1. During his crossexamination, she stated that at the time of occurrence, her age was 18 years. As there was love affection between them, she went with the accused voluntarily.

- After going through the entire evidence given by two material witnesses, I have found that at the time of occurrence age of the victim was about 18 years. Victim clearly admitted during her cross-examination that at the time of occurrence, her age was 18 years. Regarding her age, a school certificate of the victim was submitted wherein her age was mentioned as 17 years 10 months 30 days as on 01.01.2017. It is found from the school certificate M.Ext.1 that victim was above 18 years on the date of occurrence i.e. on 23.04.2017. According to PW 2, she went with the accused according to her own will. She stayed at the house of the sister of accused. It is also found from the evidence of PW 2 i.e. the victim that the accused neither committed any illicit act upon her nor committed any sexual intercourse with her. So, no case is established U/S 4 of POCSO Act.
- 13. Another charge was framed U/S 366 IPC. From the evidence of victim, I have found that she went with the accused willfully. From the evidence of victim, it is revealed that she had love affairs with accused and the accused did not take her forcefully. So, taking of victim by the accused is not proved. Prosecution failed to establish the charge either U/S 366 IPC or U/S 4 of POCSO Act. Both the points mentioned above are remained as not proved.

ORDER

- 14. Prosecution failed to prove the case U/S 366 IPC R/W Section 4 of POCSO Act against accused Stephen Hembram. Accused is acquitted and set at liberty. He is directed to furnish bail bond of Rs. 10,000/- with one suitable surety of the like amount for a period of six months as required U/S 437(A) Cr.P.C. Till then, he is allowed to remain in previous bail.
- 15. Seized articles, if any, shall be disposed of according to law.

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- 16. Accused is in jail. Therefore, Jail authority is directed to release him, if he is not required in any other case.
- 17. A copy of this Judgment shall be given to the District Magistrate, Chirang and the Superintendent of District Jail, Kokrajhar for information and necessary action.
- 18. Given under my sign and seal of this Court on this the 11^{th} day of July, 2018, at Kajalgaon, Chirang.

Dictated and corrected by me,

APPENDIX

Prosecution witness:

PW 1 – Sri Mohen Kujur

PW 2 – Victim

Exhibit (Prosecution):

Ext-1 FIR

Ext-2 Seizure list

Material Exhibit (Prosecution):

M.Ext-1 School certificate of victim

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(D.J. Mahanta) Special Judge, Chirang.