

(U/S 366 IPC and Sec.4 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam	Complainant.
-Versus-	

Kalam Uddin Barbhuiya......Accused.

Charge framed on:-....9.10.17

P.Ws. examined on:-.....18.1.18,3.2.20,

Argument heard on:-2.3.2020.

Judgment pronounced and delivered on:-.....2.3.2020.

Counsel Appeared:

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

For the Accused : Mr. R. A. Barbhuiya,ld. Advocate.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that the informant lodged an FIR with the In-Charge, Bhangarpar Police Outpost stating the facts that on 22/11/16 at about 11 a.m. the victim niece (name withheld) of the informant while going to Bikrampur Golaknath School, at Bhangarpar, Inspection Bungalow, accused had kidnapped her by his bike. The victim at 5 p.m. informed the informant on mobile phone stating that accused had kidnapped her and kept her in a rented house at Premtola, Silchar

and she suspected that the accused might have sold her.

- 2. On receipt of the FIR, O/c Bhangarpar O.P. forwarded the same to Borkhola PS wherein a regular PS case vide Borkhola P.S. Case No.393 of 16 U/S 366A of IPC was registered . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C and the victim was medically examined. Police also recorded the statement of the witnesses etc and subsequently after completion of investigation submitted charge sheet against the accused person U/S 366 A of IPC r/w Sec.4 of POCSO Act.
- 3. As the offence under POCSO Act being exclusively triable by the Court of Special court , Id. JMFC, Cachar, Silchar sent the case record to this court and trial was taken up by this court and subsequently in due course after hearing both sides formal charge U/S 366 IPC and Section 4 of POCSO Act was framed by my learned predecessor in office 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 22.11.16 at about 11 a.m. at village Bhangarpar under Borkhola PS had kidnapped the victim, the niece 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 penetrative sexual assault upon the victim, as alleged ?
- 5. From the prosecution side as many as three witnesses were examined including the victim and the informant. On the submission of the ld. Special P.P. the evidence for the prosecution side is closed.

Statement of the accused is recorded U/S 313 Cr.P.C. wherein the accused denied the allegation leveled against him and defence declined to adduce any evidence.

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 Dr. Monalisa Dev, the Medical Officer, deposed in her evidence that she examined the victim on police requisition and she opined that her (victim's) age was above 16 years and below 18 years, evidence of recent sexual penetration not detected and no injury was detected on her person and or genitals except old hymenal tears.
- 9. PW.2, the victim, deposed in her evidence that about three years back from the date of her deposition at about 4 p.m. the occurrence took place. She further deposed that at that time she appeared in HSLC examination and that she had some relations with the accused. On the date of occurrence it was holiday and she went with the accused when some villagers including her uncle i.e. the informant saw them. She further deposed that on the date of occurrence she stayed in the house of Joynal Abdin Barbhuiya, the principal of her school as it was late in the evening without informing about her such stay to her family members. She further deposed that on the following day the informant took her to her house from the school and she came to know that her informant uncle lodged a case against the accused suspecting that accused had kidnapped her. Thereafter police got her medically examined and also got her statement recorded by the Magistrate u/s 164 Cr.P.C. vide Ext.2 wherein Exts.2(1),

2(2) and 2(3) are her signatures.

In her cross examination she stated that she deposed before the Magistrate as per instruction of her uncle.

10. PW.3 Samsuddin Barbhuiya, the informant, deposed in his evidence that on the day of occurrence his niece, the victim reported him over telephone that accused had kidnapped her and PW.3 lodged an FIR to that effect vide Ext.3 wherein Ext.3(1) is his signature.

In the cross examination he stated that he does not know the contents of Ext.3 and that the victim was given in marriage and she has been living with her husband.

11. Appreciating the evidence available on record as discussed above, it reveals that the prime witness the victim PW.2 in her evidence deposed that on the relevant date and time she went with Kalam and thereafter she stayed in the house of principal of her school as it was late in the evening and PW.3 suspecting that accused had kidnapped her (victim) lodged FIR against the accused. So, it appears that the prime witness the victim did not at all implicate the accused in the alleged offence of crime in any manner. PW.3 who is a reported witness though stated in his evidence that victim reported him that accused kidnapped the victim but the same cannot help to the case of the prosecution in view of the categorical statements of the victim that at first she went with Kalam and thereafter she stayed at the house of Principal of her school. So, in view of the evidence as discussed above question of kidnapping of the victim by the accused person does not come at all and the accused person cannot be fastened in the alleged offence of crime as charged against him and as such it can be safely hold that accused is not guilty of the offence as charged against him.

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- 12. Upon consideration of all above the aspects, I hold that the prosecution has miserably failed to prove its case U/s 366 of IPC and Sec. 4 of POCSO Act against accused.
- 13. In view of the above, accused person is not held guilty and stands acquitted of the charge leveled against him and he is set at liberty forthwith.

Bail bond stands discharged.

Independ in the open court on this the 2^{nd} day of March, 2020.

Dictated and corrected by

(Darak Ullah)

Special Judge,

Cachar, Silchar.

Special Judge,

Cachar, Silchar.

Transcribed by K. Bhattacharjee, Stenographer

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 29 of 2017.

APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1 – Dr. Monalisa Dev, MO

P.W. 2 – Victim

PW.3 - Samsuddin Barbhuiya

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

Ext. 1 — Medical report

Ext.2 - statement of victim.

Ext.3 - FIR

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

(G) EXHIBITS PRODUCED BY WITNESSES: - NIL.

Special Judge, Cachar, Silchar.