IN THE COURT OF THE SPECIAL JUDGE :::::::::: HAILAKANDI

Special (POCSO)(T 1) Case No. 11/2018.

U/S - 448/376 of the IPC read with Sec. 4 of the POCSO Act.

State

- Versus -

Gulap Hussain

..... Accused.

PRESENT: Shri D. Bhattacharjee,
Special Judge, Hailakandi.

Appearance and particulars :-

For the State :- Sri U.K. Das, Ld. Public Prosecutor.

For the accused person :- Sri K.U. Laskar, Ld. Advocate.

Date of recording evidence :- 26.09.2018.

Date of recording statement u/s 313, CrPC :- 03.10.2018.

Date of Argument :- 03.10.2018.

Date of Judgment :- 03.10.2018.

JUDGMENT

The prosecution case, in brief, is that the informant Moinul Haque Sekh on 19.04.2018 lodged an ejahar with the O/C, Hailakandi Police Station alleging that on the previous day i.e. on 18.04.2018 he alongwith his wife went to Hailakandi Town in connection with NRC keeping his daughter, the victim, in the house alone and taking the advantage of their absence in the house, in the evening at about 6.30 PM the accused person Gulap Hussain trespassed into their house and kidnapped the victim and took her to his house and confining her there,

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the accused Gulap Hussain committed rape on her. On arrival in the house of the informant, they made vigorous search for his daughter for the whole night but did not find her out and on the following morning, they came to know from the people that the accused Gulap Hussain kidnapped the victim. Accordingly, he went to the house of accused Gulap Hussain and learnt about the incident from the victim. Thereafter, the informant approached the accused Jair Ali for recovery of his daughter but the accused Jair Ali did not listen to him, rather, he took the victim from the house of accused Gulap Hussain and confined her in his house.

- 2. On receipt of the ejahar, the same was registered as Hailakandi Police Station case No. 286/2018 under Sec. 448/366/342/376/34, IPC and during investigation, police visited the place of occurrence, drew up rough sketch map thereof, recorded statements of witnesses, got the victim medically examined and also got her statement recorded under Sec. 164, CPC and after completion of investigation submitted charge sheet against the accused person Gulap Hussain under Sec. 448/342 of the IPC read with Sec. 4 of the POCSO Act.
- On appearance of accused person Gulap Hussain, copies of relevant materials in terms of Sec. 207 of the CrPC were furnished to him.
- After hearing the Ld. Public Prosecutor and the Ld. Defence Counsel and after perusal of materials available on record, having found sufficient grounds for presuming that the accused person has committed the offence, the formal charges have been framed against the accused person Gulap Hussain under Sec. 448/376 of the IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- In the instant case, the prosecution has examined 2

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Nos. of Pws including the victim and the informant of the case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person is examined under Sec. 313, CrPC, wherein he has denied the allegations levelled against him by the prosecution. The defence did not adduce any evidence.

6. Heard argument of both sides. Perused the record.

7. POINTS FOR DETERMINATION :-

(i) Whether the accused person on 18.04.2018 in the Evening at about 6.30 PM at Nitainagar Pt. I committed house trespass by entering into the house of the informant Moinul Haque sekh with a view to commit certain offence, as alleged?

(ii) Whether the accused person after entering into the house of the informant committed rape on his daughter, the victim, as alleged?

(iii) Whether the accused person after entering into the house of the informant committed penetrative sexual assault on the victim, as alleged?

DISCUSSION, DECISION AND REASONS THEREOF:

8. The PW. 1, the victim, has deposed that about 5 months back, one day she went to the house of accused, who is the son of his maternal uncle, wherefrom she alongwith accused went to the house of her another maternal uncle and as such, her father lodged the case. Police got her medically examined and also got her statement recorded by the Magistrate and Ext. 1 is her said statement, wherein Ext. 1(1) is her signature.

In cross examination, the victim has stated that on her own will, she went to the house of her maternal uncle and on being tutored, she made statement before the Magistrate.

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The PW. 2, Moinul Haque Sekh is the informant of the case and he has deposed that the accused is the son of his brother in law. About 5 months back, one day he did not find his daughter, the victim, in the house and as such, he lodged the FIR and thereafter, police recovered his daughter. The informant has further deposed that on being asked, the victim told him that she went to the house of her maternal uncle for roaming.

In cross examination, the informant has stated that he mentioned the name of the accused in the FIR on suspect.

- 10. In the instant case, the evidence of the victim is of much importance in deciding the case. In her evidence she has made the fact clear that on the relevant day she went to the house of one of her maternal uncles, wherefrom she went to her another maternal uncle alongwith the accused, who is her cousin, and as such, her father lodged the case. She has also revealed in her cross examination, that on her own will, she went to the house of her maternal uncle and on being tutored, she made statement before the Magistrate. The PW. 2, the father of the victim, keeping himself in the same footing as of the victim, has vividly stated in his evidence that as he did not find his daughter in the house, he lodged the case on suspect and subsequently, on being asked, the victim told him that she went to the house of her maternal uncle for roaming. As such, when the victim herself as well as the informant has not supported their own case, I do not find any cogent reason to hold the accused person guilty for the commission of the offence, alleged.
- 11. Accordingly, it can be safely held that the prosecution failed to prove its case against the accused person beyond all reasonable doubt.
- The accused person Gulap Hussain is acquitted of the offence charged under Sec.448/ 376 of IPC read with Sec. 4 of the POCSO Act. Set him at liberty forthwith.

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13. The bail bond of the accused stands discharged.

14. Send a copy of this judgment to the Ld. District Magistrate, Hailakandi.

15. The judgment is delivered today, on this the 3rd day of October,2018.

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

Dictated and corrected by me :-

Special Judge, Hailakandi.

SPECIAL JUDGE HAILAKANDI

Dictation is taken and transcribed by Baharul Islam Choudhury, Stenographer Grade I.

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Appendix :-

Oral evidences :-

PW. 1, the victim.

PW. 2, Moinul Haque Sekh, the informant.

Documentary evidences:

Nil.

Defence did not adduce any evidence.

Special Judge, Hailakandi