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

SPL. POCSO CASE NO .11 of 2017
(U/S 366 IPC & U/s 4 of POCSO Act.)
Present:-Shri K. Choudhury, LL.M.,
Special Judge,
Cachar,Silchar.

State of AssamComplainant.
-Versus-
Tajib Chakraborty. S/O- Tapash Chakraborty. Dharmanagar. (North Tripura)Accused person
Charge framed on:11.05.2013.
P.Ws. examinedon:
Argument heard on:24-10-2017
Judgment pronounced and delivered on:24-10-2017. Learned Counsel Appeared
For the State:

<u>JUDGMENT</u>

1. Prosecution case as it evolves from the record is thaton 06-03-2013 at about 2-30 P.M. the victim minor daughter of the complainant has been found missing. Accordingly Police of Srikona P.P. was informed on 10-03-13. Subsequently on 15-03-13 the complainant came to know from secret source that the accused kidnapped his minor daughter. FIR was lodged against two other persons. On 17-03-2013 the In-charge Srikona P.P. entered the same vide G.D. entry No. 257

dated 17-03-13 and forwarded the same to O/C Silchar P.S. where it was registered as Silchar P.S. case No. 514/13, U/S 366(A)/34 IPC. During investigation the victim was recovered and was medically examined and she also gave statement U/S 164 Cr.P.C. On completion of the investigation the I.O. submitted charge sheet against the accused U/S 366(A) R.W. Sec.4 of POCSO Act.

- 2. 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 considering of the 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.
- 3. To prove the case prosecution examined three witnesses including the victim. Defence plea is that at the material time the victim was major and having love affairs with the accused voluntarily went with him. The accused during examination U/s 313 Cr.P.C. also has taken the similar plea and pleaded as innocent.
- 4. 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.
- 5. 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:

6. P.W.1 is the complainant as well as father of the victim deposed that on 16-03-13 at about 2-30 p.m. the victim went out to fetch book from the house of her private tutor but she did not return. The complainant made search but could not trace her out. On 10-03-13 he lodged missing entry to the Srikona Police out post. During further search it could be learnt that the victim was taken away by the accused to Dharmanagar, Tripura. Then he lodged FIR against the accused on 15-03-13. He further deposed that after two months of the alleged incident he along with police recovered the victim from the house of brother-in-law of the accused from Manu, Tripura. The accused was brought to Silchar. He also deposed that in the month of April he gave marriage to the victim with other person and she is now living with her husband at Bazarghat under Karimgani district.

In the cross-examination he stated that he cannot say the actual age of the victim. He did not see the alleged taking away of the victim. After the recovery it was reported by the victim that she having love affairs with the accused voluntarily went with him. It is also stated that he (P.W.1) was against the relationship of the accused with the victim mainly on the ground that accused was not healthy and having eye sight problem and also other deceases like T.B. and also for that accused belonged to Brahmin. It is also stated that having some misconception he lodged the FIR and stated the age of the victim on presumption.

7. P.W. 2 – the mother of the victim, deposed that on 06-03-13 while her victim daughter was a student of Class IX one day at about 2-

30 p.m. went out to bring book from her private tutor but did not return. Search was made but could not be traced out. On 10-03-13 her husband lodged missing entry. During further search it could be learnt that the victim was taken to Tripura by the accused. After that her husband lodged FIR. She also deposed that after about two months of the alleged incident police recovered the victim from Tripura. She further deposed that in this year in the month of April they gave marriage of the victim with other. She is now living with her husband at Bazarghat under Karimganj District.

In her cross-examination she deposed that at the relevant time the victim was above 18 years. Out of misconception previously she gave statement against the accused stating that the accused forcibly took away the victim and stayed at Tripura for 2-3 months.

- 8. P.W.3 deposed that she had love affairs with the accused and her parents are against the affairs and after that her father out of grudge lodged the FIR against the accused who did not commit any wrong with her. At the material time she was aged about 17-18 years.
- 9. From the above, it clearly appears that the victim at her own will went away with the accused and the parents of the victim were against the relationship. From the cross-examination of witnesses it appears that at the material time the victim was of consenting age. The victim and other witnesses has not adduced any evidence of any sexual assault. The evidences as recorded are found to be self-contradictory. That being so offences as charged are not proved. It is therefore held that prosecution case is not proved beyond at all. Accused is thus held to be not guilty of the offences as charged or whatsoever. He is thus acquitted and set at liberty forthwith.

Bail bond stands discharged.

10. Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 24th day of October 2017.

Dictated & Corrected by me

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

Dictation taken & transcribed by me. Pramotesh Dey. Stenographer.Gr-1

IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR. SPL POCSO Case No 11 of 2017. APPENDIX

(A) PROSECUTION WITNESSES: -

P.W. 1-Monmohan Das.

P.W. 2- SmtiShibani Das

P.W. 3 -Saptadipa Das.

(B) DEFENCE WITNESSES: -

NIL

(C) PROSECUTION EXHIBITS: -

Ext.1 - F.I.R.

Ext.1(1)— Signature of P.W.1

Ext. 2 – statement of P.W.3.

Ext. 2(1)& 2(2) - Signature of PW-3

- (E) DEFENCE EXHIBITS: NIL
- (F) COURT EXHIBITS: NIL
- (G) EXHIBITS PRODUCED BY WITNESSES: NIL.

Transcribed by me.

PramoteshDey. Stenographer.

(Shri K. Choudhury), Special Judge, Cachar, Silchar. 24-10-17:

Accused is present. He is examined U/S 1313 Cr.P.C. His statement are recorded in separate sheets tagged with the case record.

Heard argument of both sides.

Judgment written in separate sheets tagged with the case record. It is therefore held that prosecution case is not proved beyond at all. Accused is thus held to be not guilty of the offences as charged or whatsoever. He is thus acquitted and set at liberty forthwith.

Bail bond stands discharged.

Judgment is pronounced and delivered in the open court under my signature and seal of this court on this 24th day of October 2017.

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