

(U/S 366 IPC and Sec.6 of POCSO Act)

Present:- Shri Darak Ullah, AJS,

Special Judge,

Cachar, Silchar.

State of Assam	Complainant
	Complainant.
-Versus-	
Sumit Ganju	Accused.
Charge framed on:	9.12.19.
P.Ws. examined on:	18.2.2020.
Argument heard on:	18.2.2020.
Judgment pronounced and delivered on:	18.2.2020.

Counsel Appeared:

For the State : Smti. B.Acharjee, Id.Spl. PP
For the Accused : Mr. J.U. Laskar, Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that the informant lodged an FIR with the Udharbond P.S. stating the facts that on 3/6/19 at about 4-30 p.m. the minor daughter of the informant (name withheld) was found missing in the house and on search and inquiry the informant came to know that the accused had abducted the victim daughter of the informant on enticing and kept her concealed.
- 2. On receipt of the FIR, O/c Udharbond PS registered a regular

PS case vide Udharbond P.S. Case No.128 of 19 U/S 366A of IPC . Police started investigation and during the course of investigation the statement of the victim girl was recorded U/S 164 Cr.P.C. The investigating officer visited the place of occurrence and prepared a rough sketch map etc. and subsequently after completion of investigation submitted charge sheet against accused person U/S 366 of IPC r/w Sec.8 of POCSO Act.

- 3. As the offence is U/S 366 of IPC r/w Section 8 of POCSO Act being exclusively triable by the Court of Special court , Id. JMFC, Cachar, Silchar sent the case record to this court and the case was taken up for trial by this court and subsequently in due course after hearing both sides formal charge U/S 366 IPC and Section 6 of POCSO Act was framed by this court 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 3/6/19 at about 4-30 p.m. at Kumbhirgram T.E. under Udharbond PS had kidnapped the victim, the daughter 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 aggravated penetrative sexual assault upon the victim, as alleged?
- 5. Prosecution side examined as many as 2 witnesses i.e., the victim and the informant. On the submission of the ld. Special P.P. the evidence for the prosecution side is closed. As no incriminating materials appears to be found against the accused during evidence the recording of statement of the accused U/S 313 Cr.P.C. is dispensed with.
- 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, the victim deposed in her evidence that the occurrence took place about seven/eight months ago at about 8/9 PM from the date of her deposition and at that time, she eloped with the accused Sumit Gonju out of her own accord. She further deposed that they went to Moinagarh and stayed there for about one week and thereafter she heard that her mother lodged a case against the accused and therefore she along with the accused appeared before Udharbond PS and the police arrested the accused and took her to SMCH, Silchar but she refused to give consent for medical examination. PW.1 was brought to the Court where her statement U/S 164 Cr.P.C. was recorded. Ext. 1 is the said statement. She added that thereafter she again went to the house of the accused and presently she has been staying with him as his wife. She further deposed that at the relevant time, her age was 19 years.

In her cross examination she stated that after the release of the accused from jail, her parents gave her in marriage with the accused socially and she has been presently living peacefully with the accused and that she has got no grievances against the accused.

9. PW. 2, Anmia Karmakar , who is the informant of this case, deposed in her evidence that the occurrence took place about three months ago at night and at that time, after dinner they did not find their daughter at home and later on, they came to know that she was taken by the accused and

accordingly she lodged the FIR . She further deposed that at the time of occurrence, the age of her daughter was 20 years. She also added that police sent her daughter to SMCH, Silchar and also brought her to the Court where her statement U/S 164 Cr.P.C. was recorded. She also deposed that after release of the accused from jail, they gave our daughter in marriage with the accused socially. She further deposed that presently her daughter is living peacefully with the accused as his wife. Defence declined to cross examine the PW.2.

- 10. So, from the evidence of prime witness i.e. the victim PW.1 it reveals that she did not at all implicate the accused in the alleged offence of crime. PW.2, the informant, also deposed in her evidence as she did not find the victim in the house and heard that accused had taken away the victim she lodged this FIR, and that at the relevant time victim was 20 years of age, and that subsequently victim was given marriage with the accused socially. So, it is cropped up from the evidences in its entirety, that when the victim was major out of love affairs, voluntarily went with the accused and subsequently the informant side gave her marriage with the accused socially and at present victim has been living with the accused as his wife peacefully. That being the position , it appears that the victim was major at the time of occurrence and for non implication of the accused person by the victim herself in her evidence the accused deserves to be acquitted.
- 11. 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. 6 of POCSO Act against accused.
- 12. 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.

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Bail bond stands discharged.

Judgment is pronounced and delivered in the open court on this the 18th day of February, 2020.

Dictated and corrected by

Special Judge, Cachar, Silchar. Transcribed by K. Bhattacharjee, Stenographer (Darak Ullah) Special Judge, Cachar, Silchar.

IN THE COURT OF SPECIAL JUDGE, CACHAR, SILCHAR Spl.(POCSO) Case No. 39 of 2019.

<u>APPENDIX</u>

- (A) PROSECUTION WITNESSES: -
- P.W. 1 Victim
- P.W. 2 Anima Karmakar.
- (B) <u>DEFENCE WITNESSES</u>: NIL
- (C) PROSECUTION EXHIBITS: -
- Ext. 1 statement of victim
- (D) <u>DEFENCE EXHIBITS</u>: NIL.
- (E) <u>COURT EXHIBITS</u>: NIL.
- (F) EXHIBITS PRODUCED BY WITNESSES: NIL.

Special Judge, Cachar, Silchar.