IN THE COURT OF THE SPECIAL JUDGE, HAILAKANDI ::: ASSAM.

Special (POCSO) (T 2) Case No.17/2017

U/S - 448/376 of the IPC r.w. Sec. 4 of the POCSO. Act. Committed by Sri N.J. Sarma, Ld. Addl. CJM., HAILAKANDI (Assam).

State

- Versus -

Ruhul Uddin

.....Accused.

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

Appearance and particulars :-

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

For the accused persons :- Sri J.I. Choudhury, Ld. Advocate.

Dates of recording evidences :- 01.11.2017.

Date of recording statement u/s 313, CrPC :- 07.11.2017.

Date of Argument :- 07.11.2017.

Date of Judgment :- 07.11.2017.

JUDGMENT

The case of the prosecution, in brief, is that on 7.4.2016 the complainant/victim, aged 15 years lodged a complaint before the Ld. Chief Judicial Magistrate, Hailakandi alleging that the accused person Ruhul Uddin is her neighbour and since last many days, the accused has been trying to outrage her modesty. On the relevant day in the absence of the father of the complainant, the accused entered into the house of the complainant and kidnapped her

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and took her in a L.P. School of their village, wherein the accused person committed rape on her against her will, putting her under the fear of killing her and by that time, when the victim raised hue and cry, the accused person fled away from the place of occurrence leaving the informant therein.

- 2. On receipt of the complaint, the same was forwarded to the O/C, Lala Police Station for investigation of the case. Accordingly,a case vide Lala PS Case No.177/2016 was registered under Sec. 448/376 of the IPC and accordingly, police started the investigation of the case.
- During investigation, police visited the place of occurrence, recorded statements of the witnesses including the victim, drew up a sketch map of the place of occurrence, got the victim medically examined. Police also got the statement of the victim recorded by the Magistrate and on completion of investigation, having been found prima facie case police laid charge sheet against the accused person Ruhul Uddin 448/376 of the IPC. showing him absconder.
- 4. The Ld. Addl. Chief Judicial Magistrate, Hailakandi on appearance of accused person Ruhul Uddin, furnished him copies of relevant materials in terms of Sec. 207 of the CrPC and as the offence being exclusively sessions triable, committed the case to this Court.
- 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 Ruhul Uddin under Sec. 448/376, IPC read with Sec. 4 of the POCSO Act. The charges so framed were read over and explained to the accused, to which he pleaded not guilty and

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claimed to be tried. Hence, the trial.

- The prosecution in order to prove its case examined only 2 witnesses including the victim of this case. Thereafter, on submission of Ld. Public Prosecutor and the Ld. Defence Counsel, the prosecution evidence was closed. The accused person was examined under Sec. 313, CrPC, wherein he has denied all such allegations levelled against him by the prosecution. The defence did not adduce any evidence.
- Heard argument of both sides. Perused the record.

POINTS FOR DETERMINATION :-

- (i) Whether the accused person on 6.4.2016 at about 4 PM by entering into the house of the complainant/victim kidnapped her and committed rape on her, as alleged?
- (ii) Whether the accused person after kidnapping the victim/complainant committed penetrative sexual assault upon her, as alleged?

DISCUSSION, DECISION AND REASONS

THEREOF:-

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- 8. The PW. 1, the victim cum complainant, Must. Salma Khanam Laskar has deposed that she knows the accused Ruhul. The incident occurred about one year back in a day at about 4 PM. At the relevant time, while she went out to bring back her cattle, the accused pressed her mouth and took her in a school, nearby her house and started tearing her cloths and then, by raising hue and cry, she ran to her father and disclosed the entire incident. Thereafter, she lodged the ejahar, Ext. 1, wherein Ext. 1(1), 1(2) and 1(3) are her signatures. Police got her statement recorded by the Magistrate vide Ext. 2, wherein Exts. 2(1) and 2(2) are my signatures.
 - During cross examination, this witness has stated

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that the incident occurred during dusk hour and due to darkness, she could not identify the miscreant. The witness has also stated that she has no allegation against the accused person. She has also stated that she can not say the contents of Ext. 1 and at present, she has been living with her husband in his house. It is further stated by the victim during cross examination that at the relevant time, she was aged more than 18 years and on being influenced by her relatives, she made statement before the Magistrate.

10. The PW. 2, Md. Alim Uddin Laskar, the father of the victim, has deposed that the accused is his son in law. About one year back in the night at about 8 PM when he returned to his home, his daughter reported him that while she went to bring cattle during dusk hour, the accused gagged her mouth and took her in a school and tore her cloth and thereafter, by making hue and cry, she ran to their house. It is also stated by this witness that at the relevant time of incident, his daughter was 18 years old and after the incident, he gave the marriage of his daughter with the accused and at present, she is the wife of the accused and living together as husband and wife and he wants acquittal of the accused.

In cross examination, the PW. 2 has stated that her daughter, the victim did not report him anything about the incident.

- 11. In the case at hand, the accused Ruhul Uddin has been charged under Sec. 448/376 of the IPC. read with Sec. 4 of the POCSO Act but from the evidence of the victim/complainant as well as her father, nothing has come to light that the accused person trespassed into the house of the complainant and committed rape or caused penetrative sexual assault upon her.
- 12. Moreover, the victim/informant in her evidence in chief has stated that at the relevant time, the accused by pressing her mouth took her to a nearby school and started to tear her cloths and then, by raising hue and cry, she ran to her father and disclosed the

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entire incident to him, whereas in her cross examination, the victim has vividly divulged that the incident occurred during dusk hour and due to darkness, she could not identify the miscreant and she has got no allegation against the accused person and she made statement before the Magistrate on being influenced by her relatives. Apart from that, the evidence of the PW. 2, father of the victim, also does not support the prosecution case. Though in his evidence, the PW. 2 has stated that on the relevant day at night when he came to home, his daughter reported him that while she went to bring cattle during dusk hour, the accused gagged her mouth and took her to a nearby school and tore her cloth but in his cross examination, he has made it crystal clear that his daughter did not report him anything about the incident.

On record in its entirety creates a doubt as to the authenticity of the statement given in the court as the victim is found most unreliable as she in her examination in chief clearly implicated the accused while during cross examination, she has given a complete clean sheet to the accused. Moreover, the victim as well as her father have vividly stated that after the incident, the accused person has married the victim and they have been leading a happy married life as husband and wife. As such, I hold that the prosecution has failed to prove its case beyond all reasonable doubt against the accused person and accordingly, I find it appropriate to acquit the accused person Ruhul Uddin, who had been charged under Sec. 446/376 of the IPC. read with Sec. 4 of the POCSO Act. Consequently, the accused person Ruhul Uddin is acquitted of the charges levelled against him and he is set at liberty forthwith.

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- 14. The bail bond of the accused person stands discharged.
- 15. Send a copy of this judgment to the District Magistrate, Hailakandi.

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The Sessions Case is disposed of accordingly. 16.

Judgment is pronounced and delivered in the open 17. Court under the seal of this Court and on my signature on this 7th dayof November, 2017.

Specail Judge, Hailakandi.

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Dictated and corrected by me :-

Special Judge, Hajlakandi.

HAILAKANDI

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

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Appendix :-

Oral evidences :-

PW. 1, Salma Khanam Laskar.

PW. 2, Alim Uddin Laskar.

Documentary evidences :-

Ext. 1- Ejahar.

Ext. 2- Statement of the victim.

Defence did not adduce any evidence.

Special Judge, Hailakandi.

HAILAKANDI