IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge,Barpeta.

JUDGMENT IN SPECIAL POCSO CASE NO. 60 OF 2019 (G.R.No.- 2334/2018) Kalgachia P.S. Case No. 382 of 2018

State of Assam

-versus-

Pashan Ali S/O Lt. Natu Mia Resident of Balikuri NC, P.S.- Kalgachia District- Barpeta, Assam

..... Accused.

APPEARANCES:

For the State : Sri Malek Ali Ahmed, learned

Addl. Public Prosecutor,

Barpeta.

For the Accused : Mr. N.M.H. Rahman, learned

Counsel, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge: 27.05.2019,Date of Prosecution evidence: 25.09.2019,Date of Argument: 25.09.2019,Date of Judgment: 03.10.2019.

J U D G M E NT

1). The prosecution case, in brief, is that Kalgachia P.S. Case No 382

of 2018 under Sections 366(A)/34 of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Khairul Islam, father of the victim.

In the aforesaid **F.I.R**., the informant Khairul Islam(P.W.2), who is the father of the victim girl, alleged interalia, that on 02.05.2018 at about 4:00 PM, the accused person namely Pashan Ali along with others kidnapped her minor daughter (P.W.1) aged about 17 years, when she went to her maternal aunt's house at Gunialguri. It is alleged in the ejahar that the accused took his minor daughter to some unknown place.

On receipt of the aforesaid F.I.R. dated 14.05.2018 by the Officer-In-charge, Kalgachia Police Station, the same was registered as **Kalgachia P.S.** Case No 382/2018 under Sections 366(A)/34 of IPC. Section 4 of the Protection of Children From Sexual Offences Act, 2012 was also added subsequently.

During the course of investigation, the victim girl was recovered. Her statement under section 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge-sheet, in the case, against the accused **Pashan Ali under Sections 366(A) of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.** vide charge sheet **No. 59/2019**, dated **10.03.2019**.

- **2).** On production of accused, copy was furnished to him by the undersigned.
- 3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, charges were framed by undersigned against the accused under Sections 365 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **02 [two]** number of witnesses including informant and victim were examined on behalf of the prosecution to prove the charge under Sections 365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

The Prosecution Witnesses was closed, as per prayer made by learned Public Prosecutor, Barpeta. The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

- 5). I have heard **Sri Malek Ali Ahmed**, learned Addl. Public Prosecutor of Barpeta, for the State as well as **Mr. N.M.H. Rahman**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.**
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether the accused on or about 02-05-2018 at about 04:00 PM within the jurisdiction of Kalgachia P.S., District Barpeta, kidnapped Rojina Khatun, minor daughter of informant Khairul Islam, when she was going to her aunty's (Mahi) house at Gunialguri, with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC?
- (ii) Whether accused on the aforesaid date or thereafter committed penetrative sexual assault upon minor victim, of the above named informant and thereby committed an offence punishable under Section 4 of the Protection of Children From Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). To decide the above point and sections of law, let us examine,

analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Razina Khatun [P.W.1] has deposed that informant is her father and she do not know the accused person. Incident took place about one year ago. On the relevant date, she went to market without informing her family members. From market, she went to the house of her mother's sister(mahi) at Gunialguri and stayed there for one week at the house of her Mahi. Then, her father came and took her with him to her house. Then, police brought her to thana

Police examined her and brought her before the learned Magistrate for recording her statement under Section 164 CrPC. She exhibited her statement vide Ext.1 and Ext.1(1) & 1(2) are her signatures. She gave her statement before the learned Magistrate as tutored by police. She do not have any relation with the accused. He did not do anything with her. Accused did not force her to go with him or he did not touch her body.

In her cross-examination, she stated that she gave her statement before learned Magistrate as tutored by police.

8). Khairul Islam [P.W.2] deposed in his evidence that victim is her daughter. He do not know the accused. He stated that his victim daughter went to market on the relevant date. But she did not return to home. He searched her, but did not find. After that, he searched her for one week and when he did not find her, he lodged the case by putting thumb impression on the FIR. Then, he came to know that she was staying in the house of elder sister of his wife. He do not know who wrote the ejahar. He further stated that he lodged the case against the accused, on suspicion, as told his brother-in-law namely Ayub Ali.

In his cross-examination, he stated that he does not know the content of the FIR.

9). From a close perusal of the statement of the victim (P.W.1) as well as the informant [P.W.2] (who is the father of the victim girl), it is seen that they did not support the alleged incident, in their evidence.

The Victim (P.W.1), who is star witness of the instant case deposed in her evidence that on the relevant day, she went to market without informing her family members. After that, she went to her maternal aunt's residence at Gunialguri and stayed there for one week. Then, her father came and took her with him to her house.

P.W.1 clearly stated in her evidence that she did not have any relation with the accused and accused did not do anything with her. She gave her statement before the learned Magistrate, as tutored, by Police.

Moreover, the informant (P.W.2) stated in his evidence that he had filed this case when he did not find his daughter after searching her for one week. Then, he came to know that his victim daughter was staying in the house of elder sister of his wife. He further stated in his evidence that he lodged the case against the accused, on suspicion, as told his brother-in-law namely Ayub Ali and he did not know the content of the FIR.

Thus, it is clearly indicated that victim girl voluntarily went to her maternal aunt's house. Her conduct clearly shows that the alleging incident narrated in the FIR is totally false.

The conduct of victim clearly shows that she willingly went to her maternal aunt's house and the conduct of the victim is not found natural had she been abducted or kidnapped by the accused person by force.

There is no material on record to hold that the accused kidnapped and committed rape on the victim, to constitute offence under Sections 365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

10). To bring home the guilt of the accused under Section 365 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.

- that victim had voluntarily went to her maternal aunt's house. There is no evidence of kidnapped or raped to the victim at the relevant time of incident. Victim herself has not supported the case of prosecution side to prove the alleged charges against accused.
- **12).** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has to be proved against the accused beyond reasonable doubt.
- **13).** In the result, accused **Pashan Ali** is **acquitted** of the charge **under sections** 365 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

The bail bond stands discharged.

14). Given under my hand and seal of this Court on this 03rd day of October, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Razina Khatun, the victim, P.W.2 = Khairul Islam, the informant.

(B) Prosecution Exhibits:

Ext.1 = Statement of the victim recorded u/s

164 CrPC,

Ext.1(1) & 1(2) = Signature of the victim.

(C) <u>Defence witnesses</u>: Nil.

(D) Defence Exhibits: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.