### IN THE COURT OF THE SESSIONS JUDGE, CACHAR AT SILCHAR.

Present :- Sri K. Choudhury,

Sessions Judge, Cachar, Silchar.

**Spl. (POCSO) Case No : 12/2016.**U/S. 366/344 IPC R.W. Sec.4 of POCSO Act.

State of Assam......Complainant.

-Vs-

Manik Dey.

S/O Late Monindra Ch. De

Sibporia basti. Po. & Dist. Tinsukia :::::::::: Accused person.

Charge framed on: - 30.06.2016.

Date of recording evidence: - 19-07-16, 04-08-16, 18-08-16, & 01-09-16,

Statement of the accused person recorded on: 01.09.16.

Argument heard on :- 08.09.2016.

Judgment delivered on :- 14-09-2016.

ADVOCATE APPEARED

For the prosecution :- Mr. S. Dutta. P. P.

For the defence :- Mr. S. Takur. Learned advocate.

#### JUDGMENT

1. Prosecution case as it evolves from the record, in brief is that the victim, the minor daughter of the complainant when reading in class-IX inadvertently over wrong telephonic call got acquittance with the

accused. After that there had been regular conversation among them which continued for about five months. One day prior to the alleged incident the accused came from distance place and made contact with the victim who seeing the accused as much older than her was reluctant to maintain the relationship. However, on the threatening of the accused to commit suicide and to kill her father she on the morning of 04-01-16 went out from her house in the very early morning and went to Rly station Silchar where from she was taken to Tinsukia by the accused. There, at Tinsukia both of them started to live in a rented house. On 06-01-16 he married her against her will and also had physical relation with her. On 18-01-16 both of them came to her parents house at Silchar where from he was arrested by police. Before that on the following day of the incident i.e. on 05-01-16 father of the victim gave missing entry to Tarapur TOP. The same was entered vide G.D.E. No. 106 dated 05-01-16 and subsequently it was registered as Silchar P.S. Case No. 39/16 U/s 366-A IPC.

- 2. During investigation, victim was medically examined. She was also produced before the Magistrate who recorded her statement U/S 164 Cr.P.C. Doctor opined her age as above 16 and below 18 years. On completion of investigation I.O. submitted charge sheet against the accused U/S 366 IPC R.W. Sec. 4 of Protection of Children from Sexual Offence (POCSO) Act 2012
- 3. On production of the accused, Learned J.M. Ist class furnished

copies of all necessary police papers to him and committed the offence. After hearing of both sides and perusal of materials on the record, this Court framed formal charges against the accused U/S 366 IPC and also under Sec.4 of POCSO Act. The charges were read over and explained to the accused to which he pleaded not guilty. Hence, trial began.

- 4. To prove the case, prosecution examined as many as seven witnesses (P.Ws) including the Doctor and the I.O. Defence plea is that at the material time the victim was a major one and victim at her own will went with the accused and at her free will got married with him. Subsequently on their return she being tutored gave statement against the accused. During examination of the the accused U/S 313 of Cr.P.C. it is pleaded that the victim disclosed her age as 18 yrs. 7 months and she had no objection in the marriage. After that they got married and he made contact with her parents who expressed to accept him as their son-in-law. He further stated that he then came to the house of her parents with the victim and disclosed everything. However, he was handed over to police. He further stated that he firmly believed that the victim was a major. He pleaded his innocence.
- 5. From the above it appears that the accused virtually admitted that he took the victim to Tinsukia and resided with her as husband and wife in a rented house.
- 6. Now, under the above facts and circumstances of the case, the most question before this court is whether the victim was of consenting age.
- 7. To decide the above point I have heard argument from both sides and perused the entire evidence on the record. My findings and

decisions with reasons thereof are given below.

- 8. P.W.1 Dr. Orina Raha deposed that on 19-01-16 while she was posted at S.M.C.H. Silchar in the deptt of Forensic Science on police requisition in connection with Silchar P.S. case No. 39/16 U/S 366 IPC examined the victim of this case. She further deposed that on the basis of physical including dental examination, Laboratory and radiological examination arrived to the opinion that the victim was above 16 and below 18 years. She denied the suggestion that as per Modi's medical jurisprudence when epiphyses fused with parent bone and when iliac crest is fused, age of the individual would be above 18. She further denied the suggestion that the age of individual at the material time was above 18.
- 9. PW. 2 is the father of the victim. According to him at the material time the victim was aged about 15 years and was reading in class-IX.
- 10. PW. 3 mother of the victim also deposed accordingly.
- 11. PW. 4 the victim. According to her evidence, on the date of the occurrence at about 5.00 a.m. she on call of the accused went to Silchar Rly. station, and therefrom with the accused went to Tinsukia where she was kept in a rented house for one week. The accused put vermilion on her forehead and conchs on her hands. During the stay, the accused had physical relation with her. After that the accused brought her to her parents house at Silchar where from the accused was taken by police. Ext-4 is the statement. She denied the suggestion that she voluntarily went with the accused. She however stated that she did not make any hue and cry at the time of putting vermilion by the accused.

There is no cogent cross-examination on the point of her age.

- 12. PW. 5 and P.W.6 being closed relative of the accused adduced evidence as reported witness regarding the taking away of the victim and handing over of the accused to police in their presence.
- 13. PW. 7 is the I.O. who deposed about the receipt of missing entry lodged by the father of the victim on 05-01-16. According to him he was entrusted to investigate the case. He opened the MCD, recorded the statement of the witness, visited the house of the complainant and the Rly station. Subsequently on 18-01-16 from reliable source it could be learnt that the accused and the victim were apprehended by local people. He then went to the house of the complainant and apprehended the accused and recorded statement of the victim. On completion of investigation submitted charge sheet.

In the cross-examination he stated that on 18-01-16 in the afternoon local people informed him about the visit of the accused and the victim to the house of the complainant. On his visit to the house he saw both the accused and the victim.

- 14. In the entire evidence there is no contradiction, any material omission or any material discrepancy with regard to any point or circumstances of this case.
- 15. It is evident that the victim went with the accused to Tinsukia and resided there with the accused. According to the witnesses the accused against her will resided with her as her husband in a rented house and against her will had physical relation with her. According to the accused the

victim having love affairs with him voluntarily went with him and he had no malafide intention. Further according to the defence contention had there been any malifide intention the accused would not have returned to the house of the complainant with the victim and that too just after few days of the incident. According to the accused he believing the age of the victim as above 18 took her and married her.

- 16. The above being the admitted position material point is to determined whether at the material time the victim was below 18. According to P.W.1 M.O. the victim was below 18 and above 16. It is evident from corroborative evidence that, the victim was a student of class-IX at the material time and that fact remains almost unrebutted. This peace of evidence is also supported by the evidence that her immediate elder sister at the material time was a student of class XII and eldest brother was a student of B.A 2nd semester. Similarly her younger sister was reading in class-VII. Under such circumstances the age as disclosed in the medical evidence can be accepted.
- 17. Upon consideration of the above and the evidence in its entirety it can rightly be arrived at that the prosecution has been able to establish that at the material time the victim was below 18 years of age. That being so, consent of the victim is totally immaterial. Therefore admitted physical relation of the accused with the victim would bring home the offence guilty U/S 4 of the POCSO Act. Although it is evident that the victim in response to telephonic call went to the rly. station but it cannot be said that there was no inducement on the part of the accused to take the victim to Tinsukia. The going of the victim under the facts of the circumstances of the case is sufficient enough to establish the offence U/S 366 IPC.
- 18. In view of the above discussion of evidence, contention and

consideration of evidence on its entirety it is held that prosecution case is proved beyond all reasonable doubt U/S 366 IPC and Sec.4 of POCSO Act. Therefore, the accused is held guilty and convicted accordingly.

- 19. Heard the accused on the question of sentence. He has stated that he is having aged widow sick mother and he is the only son and has no own brother and sister. There is none to look aftr her mother who resides at a distance place. He thus submitted for lenient punishment. Learned defence counsel also prayed for lenient punishment. Learned P.P. during argument also considering the facts and circumstances of the case submitted for showing leniency to the accused.
- and the circumstances of this case under which the victim went with the accused to Tinsukia and their return to the house of the complainant i.e. father of the victim with an expectation that the accused would be accepted as son-in-law of the complainant, I have taken lenient view. Therefore, under such special circumstances I convict and sentence the accused U/S 366 IPC to undergo Rigorous Imprisonment (R.I.) for a period of two years along with fine of Rs. 2000/- and in default shall further undergo R.I. for a period of one month. Accused is also convicted and sentenced U/s 4 of POCSO Act to suffer R.I. for a period of three years and shall also sentence to pay a fine of Rs. 5000/- and in default shall further undergo R.I. for a period of two months. Both the sentences shall run concurrently. Period of custody shall be set off from the above sentence.
- The above fine if realized shall be paid to the victim as compensation. In addition to that further compensation may be paid in case of any prayer made by the victim or any of her parents before the Secretary, DLSA who shall after proper enquiry shall determine adequate compensation.
- 22. Copy of the Judgment be furnished to the accused free

of cost as per provision of Sec. 363 Cr.P.C. and to be forwarded to the District Magistrate as per provision of Sec. 365 Cr.P.C. A copy of the Judgment is also be forwarded to the Secretary DLSA for taking necessary step on his part if any.

Judgment is pronounced and delivered in the open Court under my seal and signature on this 14th day of September., 2016.

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

Dictated & corrected by me.

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

Dictation taken & transcribed by me.

(Pramotesh Dey) Stenographer. Grade-I

#### IN THE COURT OF SESSIONS JUDGE, CACHAR, SILCHAR.

# Spl. POCSO. 12/2016. APPENDIX

(A)	PROSECUTION WITNESSES	<u>:</u> :	
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- PW. 1 Dr. Orina Raha
- PW. 2 Tamjan Rongmai.
- PW. 3 Mrs. Lanthaile Rongmei...
- PW. 4 Lalboan Rongamei.
- PW. 5 Gaijailong Rongmei.
- PW. 6 Lingthalungampow Naga.
- PW. 7 Horipada Dey.(I.O.).
- (B) <u>DEFENCE WITNESSES</u>: NIL.
- (C) <u>COURT WITNESSES</u>: NIL.

## (D) PROSECUTION EXHIBITS: -

- Ext. 1 Medical Report.
- Ext. 1 (1)& 1(2)— Signature of P.W.1.
- Ext.-1(3): Signature of Dr. G. Das.
- Ext-1(4) History narrated by victim...
- Ext-1(5) Report of Dr. Debalok Chakraborty.
- Ext-1(6) Signature of P.W.4
- Ext-2 Police requisition.
- Ext-2(1) Signature of Dr. Orina Raha.

Ext-2(2) Signature of P.W.7

Ext. 3 — Missing entry.

Ext. 3(1)— Signature of PW-2.

Ext-3(2) - Signature of I/C of Tarapur out post.

Ext-3(3) Signature of the then O/C of Silchar P.S.

Ext. 4 - Statement of P.W.4.

Ext. 4 (1) & 4(2)— Signature of PW-4.

Ext-5 Sketch map.

Ext-5(1) Signature of P.W.7.

Ext-6 Charge sheet.

Ext-6(1) Signature of P.W.7

(E) <u>DEFENCE EXHIBITS</u>: - NIL.

(F) <u>COURT EXHIBITS</u>: - NIL.

(G) EXHIBITS PRODUCED BY WITNESSES: - Nil.

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