OF JUDGMENT IN SESSIONS CASE

District :- Goalpara.

IN THE COURT OF SPECIAL JUDGE, GOALPARA.

Present:- Sri S. Hazarika, A.J.S.

Special Judge, Goalpara.

Spl. Case No. 23/2018.
U/s.363 of I.P.C. R/W. Sec. 4 of the POCSO Act.

In connection with GR Case No.1668/18

State -vs-

1. Galib Hussain

..... Accused.

Ld. Advocates appeared:-

For the Prosecution :- Sri S. Sarma, Special Public prosecutor.

For the accused :- Mr. Gul Mahammad, Advocate

Date of evidence : - 17/11/2018, 01/12/2018, 20/12/2018,

02/02/2019 & 26/02/2019.

Date of argument :- 03/05/2019.

Date of judgment : - 12/06/2019.

<u>JUDGMENT</u>

1. The prosecution case in brief is that the informant Solimuddin Seikh lodged an F.I.R. on 02/07/2018 with O/C of Krishnai P.S. alleging inter alia that the prosecutrix is his daughter who was aged about 17 years at the time of the incident. The accused in order to commit sexual intercourse on

28/06/2018 he came with his two friend in a vehicle and by promising to marry her took her, in a tempo(vehicle) to his house. The family members of the accused did not accept his daughter and hide the accused in inknown place. As the public came to know about the incident, the prosecutrix was handed over at Agia P.S. The accused at the time of taking his daughter committed intercourse with her. As there was talk of compromise the delayed in filing the F.I.R. Accordingly, the informant prayed for taking necessary action against the accused.

- 2. On receipt of the said F.I.R. O/C of Krishnai P.S. registered the present case and investigation was done. During the course of his investigation the I/O. Arrested the accused and forwarded him. The victim was examined and medical examination was also done. The victim was sent to Court for recording her statement and accordingly, her statement recorded U/S.164 Cr.P.c. The I/O also seized one school certificate. The I/O prepared the Sketch Map of the P.O. After completion of investigation submitted Charge Sheet against the accused.
- The present case was registered as Spl. Case and the copies of relevant documents were furnished. After hearing both parties and considering the materials on record, this Court was pleased to frame charges U/S.363 of I.P.C. R/W Sec. 4 of the POCSO Act against the accused. The contents of the charges were read over and explained, to which, the accused pleaded not guilty and claimed to be tried.

4. **POINT FOR DETERMINATION ARE:**

- (i) Whether the accused on 28/06/2018 at around 7:00 P.M. at village Khamar Manikpur kidnapped a minor girl who was aged about 17 years by removing her from her parents without their consent?
- (ii) Whether the accused on or about the same date, time and place committed penetrative sexual assault upon the minor victim girl?
- **5.** After the evidence of the prosecution side the statement of the accused was recorded U/S.313 of Cr.P.c. wherein the accused claimed to be innocent and denied each and every circumstances against him. The accused declined to adduce evidence in defence .

6. I have heard submissions of both parties and also gone through the evidence on record.

DISCUSSIONS, DECISIONS AND RESONS THREFORE:

- 7. In the instant case, the prosecution sides examined 8(eight) witnesses including two official witnesses. Among the witnesses PW1 is the informant. PW2 is the victim(prosecutrix) of the present case. PW3 is the sister of the victim. PW4 is the brother of the informant. PW5 and PW6 are the two independent witnesses. PW7 is the Medical Officer and PW8 is the I/O of the Case.
- 8. Considering the nature of the case, let me now, first discuss the evidence of the Medical Officer who examined as PW7 Dr. M. Lagachu in her evidence stated that on 03/07/2018 she was posted as Medical Officer at Goalpara Civil Hospital and on that day, she examined the victim in connection with Krishnai P.S. Case No.176/2018. The victim was identified by WPC 308 Krishna Ch. Choudhury. On examination of the victim. She found her height 4'10', weight 45 Kgs., teeth 15/15. On examination no abnormality was detected, hymen was found absent and vagina admitted two fingers. Further, on examination other reports, the age of the victim was found to be above 18 years and below 20 years. Further, she stated that there was no sign of recent sexual intercourse. There was no mark of violence on her private parts. She proved the medical report as Ext.3.

On going through the evidence of the Medical Officer it appears that there was no sing of recent sexual intercourse and there was no mark of violence on her private parts. The teeth was found 15/15. The Medical Officer further opined that the age of the victim was above 18 years and below 20 years. Though the Medical Officer ascertained the age of the victim above 18 years and below 20 years but such opinion cannot conclusively prove about the age of the prosecutrix. The opinion of the Medical Officer may vary two years less or above. The approximate age of the prosecutrix could be ascertained by the Medical science. Therefore, the age of the victim may be 16 years or may be 22 years. Therefore, opinion of the Medical Officer regarding the age of the victim cannot be accepted.

9. The informant as PW1 stated that four months back his

daughter's age was around 16 years. She was studying in school. She had love affairs with the accused and he took her to his house. As the parents of the accused did not accept his daughter she was handed over at the Police Station. Thereafter, she took her to her residence and there was talk of compromise with the relatives of the accused. The FIR was lodged with few days in delay. The Police also seized one school certificate regarding the date of birth of his daughter. On the date of the examination he brought the original school certificate. Ext.1 is the school certificate proved in original. In his cross-examination, he stated that he lodged the F.I.R. after four days of the incident.

Though the informant in his FIR has stated that due to talk of compromise the FIR was lodged with some days delay but in his evidence he remained silent. Admittedly there was delay of four days in lodging the F.I.R. The informant except for his evidence did not bring any other independent witnesses to show that both the parties were having talk of compromise. Further in his cross-examination he stated that he has no personal knowledge as to how his daughter got missing and only after inquiry he came to know that the accused has taken his daughter to his house. The informant in his evidence stated that the accused had done bad things with her daughter but in cross-examination he stated that he does not know what bad thing was done with her daughter. Thus, the evidence of the informant that the accused came and kidnapped his daughter and took her to his house was heard from others. As he himself admitted that he has no personal knowledge about the incident. Further, this witness admitted that he is an illiterate person and he does not know what is written in the seizure list which was prepared by Police. He also stated that he does not know what is written in his F.I.R. This is a very vital lacunae in the prosecution case. The maker of the FIR himself admitted that he does not know what is written in the F.I.R.

10. PW2 is the prosecutrix. She is the vital witness to the prosecution case. In her evidence she stated that her date of birth is 20/04/2002. The incident occurred four months back. She had love affairs with accused Galib Hussain. On the date of the occurrence, at about 8:30, P.M. the accused called her and asked her to accompany him. The accused

came with his friend in an Auto and he threatened that if she refuse to go with him he will upload a Video in the social media. Thereafter, the accused took her up to his house where he committed rape upon her. Thereafter, the brother of the accused came and asked Galib Hussain to run away from the house and she was taken to Police Station. She was accordingly, handed over at Agia P.S. and on the subsequent day, her father came and received her. Police took her to Hospital and thereafter, she was taken to Court for recording her statement and she accordingly gave her statement U/S.164 Cr.P.C. Ext.1 is the School certificate regarding her date of birth and copy of the same was taken by Police. Ext.2 is her statement U/S.164 Cr.P.c.

The evidence of the prosecutrix is very clear that her date of birth is 24/04/2012. She further proved the Ext.1 vide which her school certificate was seized by Police. On perusal of the Ext.1 it is quite evident that date of birth of the victim is 20/04/2002 which has been fully corroborated by prosecution in her evidence. The evidence of the prosecutrix is very clear that the date of birth of the victim is 20/04/2002 and at the time of the incident she was below 18 years.

Though the victim herself admitted that she had love affairs with accused Galib Hussain and on the date of the occurrence accused came with his friends and asked her to accompany him. On her refusal the accused threatened her to upload a video in the social media.

In the instant case, it appears that there is no eye witness to the occurrence as regards removing the girl from the house of the informant and taking her to his house. But it is not denied that the prosecutrix, in fact, found in the house of the accused and the family members of the accused took her to Police Station and handed over her at the P.S.

The prosecution was required to prove that the accused by giving inducement or threatening or by any means forcefully compelled the victim to accompany the accused. The prosecutrix in her evidence stated that the accused compelled her to go with him by threatening to upload a video in the social media but the Investigating agency could not bring this aspect to light. The Investigating Officer could not recover any video that may be lying in the mobile phone of the accused. Therefore, the evidence

that she was compelled by the accused to accompany him could not be corroborated by any other believable material. Therefore, very basis of the prosecution case that the accused had compelled the victim to accompany the accused also appears to be doubtful.

11. PW3 is the sister of the prosecutrix. In her evidence she stated that four months earlier at about 7:00 P.M. when she was sleeping inside her house, the prosecutrix was watching T.V.. She got up and found her sister missing. At about 12:00 P.M. her father was informed that the brother of the accused handed over her sister at Agia P.S. Later on, her father brought back her sister. In her cross-examination, she stated that she does not know how his sister got missing.

The evidence of this witness is very clear that she does not know under what circumstances her sister had gone missing . She remained silent that the accused had taken her sister. Therefore, her evidence is of little consequences.

12. PW4 stated that the informant is his nice . Four months earlier the occurrence took place. His nice had love affairs with accused Galib Hussain. He was informed by the sister of the prosecutrix that the prosecutrix got missing. Later on, at about 12:00 A.M. at night time the family members of the accused informed them that the accused had taken the prosecutrix. Later on, O/C of Agia P.S. called the informant who brought the prosecutrix. Though, the family members of Galib Hussain assured to hold a meeting but no such meeting was held. For this his brother-in-law lodged the F.I.R. In cross-examination he admitted that he went to the P.S. on the next morning and he does not know what had happened on the previous night.

The evidence witness clearly shows that he has got no personal knowledge regarding missing of the prosecutrix and he only came to know about the incident from others. Therefore, his evidence cannot support the allegation that the victim was kidnapped by accused Galib Hussain and she was forced to accompany the accused to his house.

13. PW5 is an independent witness. He stated that some six months earlier at about 6:30 P.M. he saw accused Galib Hussain with his friend were walking on the road and on being asked, the accused told him that he will

visit somebody's house. At around 7:00 P.M. the informant came to his house looking for his daughter but could not be found. Later on, they came to know that the victim girl is at Agia P.S. Later on, the victim was brought by him and he came to know accused Galib had taken the prosecutrix.

The witness in his cross-examination stated that he has no personal knowledge about the incident as he has not seen the occurrence. He further stated that he does not know if accused had given any promise to marry the prosecutrix. The evidence of this witness also could not prove that the accused had removed the prosecutrix and compelled her to accompany him. His evidence only shows that the prosecutrix got missing and she was found at Agia P.S. from where the informant had brought her back.

- 14. PW6 is another independent witness who also stated that 5/6 years ago at around 6:00 P.M. he saw accused Galib Hussain in his village at around 7:00 P.M. The mother of the prosecutrix came looking for her daughter. On inquiry, she came to know that the accused had taken the prosecution to Chanmari. Later on, the father of the prosecutrix brought her from the Agia P.S.
- **15.** PW7 ASI S. Nath stated that he was endorsed to investigate the case by O/C, Krishnai P.S. and during the course of his investigation he visited the P.O. and prepared the Sketch Map Ext.5. He also seized one school certificate of the victim. After completion of investigation he submitted Charge Sheet Ext.7. He also proved various exhibited documents. Ext. 6 is the Seizure list.

PW1(informant) in his evidence remained silent as to when he got the information regarding missing of his daughter. PW2 the prosecutrix in her evidence stated that on the day of occurrence, she along with her sister were present in the house. PW3 is the sister of the prosecutrix who stated that on the day of occurrence she was sleeping and her sister(prosecutrix) was watching T.V. She also remained silent that her parents was present in the house. PW4 is also silent regarding the presence of the informant and his wife.

In the instant Case the only evidence came from the victim of the alleged incident who alleged that the accused forced her to accompany him and she was taken to the house of the accused but none of the witnesses has seen the accused having taken the victim to his house.

Though the victim alleged that she was forced by accused to accompany him by threatening her to upload her video in the social media but this aspect could not unearthed by prosecution.

The evidence on record shows that the victim was handed over by the relatives of the accused at Agia P.S. The evidence shows that the victim, in fact, reached the house of the accused and thereafter, she was handed over at the P.S. This itself shows that the relatives of the accused were not happy in her present at the house of the accused. It is not unexpected that the accused and his relatives will hand over the victim at the P.S. if she had been kidnapped by the accused. Therefore, the allegation that the accused had taken the girl to the house of the accused Galib Hussain appears to be doubtful.

From the evidence of the record it appears that the I/O has seized one school certificate where in her date of birth of the victim is shown on 20/04/2002 and on the date of the occurrence she was a minor girl. The prosecution was primarily required to prove that the accused had forced the victim to accompany him and she was taken to the house of the accused but the evidence on record does not inspire confidence to accept the allegation against the accused.

The victim and the complainant had alleged that the accused had committed rape upon the victim but the evidence of the Medical Officer clearly stated that she did not find any sign of recent sexual intercourse and there is no sing of injury mark over the her body or her on private parts. Thus, the medical evidence also clearly did not support the allegation of rape committed upon the victim.

- 16. Considering the evidence as well as discussion above made, it is found that prosecution has failed to bring home the charges against the accused and the accused deserves to be acquitted and accordingly, he is acquitted.
- **17.** The bail bond of the accused stands cancelled after six month from the judgment.

18. Given under my hand and seal of this Court on this 12th day of June, 2019.

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

(Sri S. Hazarika, AJS,) Spacial Judge, Goalpara.

Special Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara.

APPENDIX Special: 23/2018.

PROSECUTION WITNESSES:-

PW1 Solimuddin Sk.

Pw2-Prosecutrix.

PW3-Sanowar Begum

PW4-Mohibul Hoque

PW5-Talimul Islam

PW6-Subhan Ali

PW7-Dr.M.Lagachu

PW8-ASI Sukumar Nath.

PROSECUTION EXHIBITS:-

Ext.1 -School certificate of the victim.

Ext.2-164 Statement

Ext.-3-Medical Report.

Ext.4-FIR.

Ext.5-Sketch Map

Ext.6-Seizure list.

Ext.7-Charge Sheet.

DEFENCE WITNESS:-

NIL

DEFENCE EXHIBITS:-

NIL

(S. Hazarika, AJS)
Special Judge,Goalpara.