#### IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge,

Sivasagar.

# Spl. (P) Case No. 52 of 2017 U/S 366 IPC& Sec 6 of POCSO Act 2012 (Arising out of Sapekhati P.S. Case No. 83/2016)

State of Assam

-Vs-

Sri Chulu Tanti ...... Accused

**APPEARANCE:** 

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Tashlima Ahmed Rahman, Advocate

Date of framing Charge : 15.11.2017
Dates of Evidence : 28.02.2018
Date of Argument : 31.05.2018
Date of Judgment : 31.05.2018

## JUDGMENT

- 1. Prosecution case, in brief, is that on 22.09.2016, informant Sri Kalidas Tanti lodged an FIR with O/C, Sapekhati P.S. alleging, inter alia, that on 18.09.2016, at about 7.00 p.m., his daughter victim 'N' (name withheld), aged about 13 years went to the backside of her house to attend nature's of call, but did not return. Non-finding her, they made search of the victim and subsequently learnt that accused Chulu Tanti has kidnapped the victim by enticing her and kept her concealed somewhere.
- 2. On receipt of the FIR, Sapekhati P.S. Case No. 83/2016, U/S 366 (A) IPC was registered and started investigation. During investigation, victim

was medically examined and recorded her statement in the court U/S 164 Cr.P.C. Accused was arrested and produced him before this court for judicial custody. On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person U/S 366 (A) IPC.

- 3. Initially the case was registered as Sessions Case No. 33(S-C)/2017 and on 17.02.2017, the case was made over to Additional Sessions Judge, Circuit Court at Sonari for disposal. However vide order dated 16.09.2017, learned Trail Judge by holding that the case is exclusively triable by Special Judge, Sivasagar, transferred the case to this court. Accordingly case was re-registered as Special (Pocso) case. Accused appeared before this court and was allowed to remain in previous bail. Upon hearing both the sides, vide order dated 15.11.2017, charges U/S 366 IPC and Section 6 of POCSO Act 2012 have been framed against the above named accused to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined three witnesses viz. the victim and her parents.
- 4. Considering the nature of the evidence of victim and her parents, examination of accused u/s 313 Cr.P.C is dispenses with.
- 5. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Tashlima Ahmed Rahman, learned defence counsel and gone through the evidence on record. I have considered the submission of both the sides.

### POINTS FOR DETERMINATION ARE

- 6. (I) What was the age of the victim 'N' on the date of incident?
  - (II) Whether on 18.09.2016, at about 7 PM, accused kidnapped or abducted the victim 'N'? If so, what was the intention of the accused person behind such kidnap or abduction?
  - (III) Whether on 18.09.2016, at about 7 PM, accused has committed aggravated penetrative sexual assault on the victim 'N'?

## **DECISION AND REASONS THEREOF**

- 7. PW 1 Sri Kalidas Tanti, father of the victim in his evidence deposed that presently his daughter is aged about 18 years. She left school after reading upto class IX. On 18.09.2016, at evening hours, on returning home, I came to know that victim N was missing from the house. On knowing this, they made search for her and during search, he learnt that accused Chulu Tanti was also missing from his house. On this, on 22.09.2016, he lodged FIR at Sapekhati PS. Police recovered the victim and also apprehended the accused. On meeting his daughter at the PS, the victim stated that on her own, she went with the accused Chulu for visit to Duliajan. She also stated that she stayed at the residence of accused. She did not complained about any misbehave by the accused. Exbt. 1 is my FIR. From Court he took custody of his daughter. In his cross-examination, PW 1 admitted that accused maintained a good relation with them and his daughter used to go with the accused on several other occasions. He has no objection in acquittal of the accused from this case.
- 8. PW 2 Smt. Lalita Tanti mother of the victim in her evidence deposed in similar line with the PW 1. She further stated that presently victim is aged about 20 years. PW 2 also confirmed that after recovery, victim stated that on her own she went with the accused Chulu for visit to his maternal uncle's house at Duliajan. She did not complained about any misbehave by the accused. In her cross-examination, she admitted presently they have fixed the marriage of his daughter with the accused.
- 9. PW 3 the victim in her evidence while claiming her present age as 20 years, deposed that on 18.09.2016, without informing her parents, on her own she went with the accused Chulu for visit to his maternal uncle's house at Duliajan and stayed there for 4 days. Due to non-finding her, her father filed this case. On this police recovered her and apprehended accused from Duliajan. Police took her for medical examination and also to Court. She gave statement at Sonari Court. Exbt. 2 is her statement given on that day. On that day, I

deposed in similar lines. In her cross-examination, she admitted that accused maintained a good relation with her family and has visiting relation. Presently her parents fixed her marriage with the accused. Accused did not use force on her while she went to Duliajan. Accused did not cohabit or misbehave with her at Duliajan. She has no objection in acquittal of the accused from this case.

- 10. <u>Point No. 1:-</u> So far age of the victim is concerned, though in the FIR the age of the victim was mentioned as 13 years, however while giving evidence in court on 31.05.18 as P.W.3, the victim claimed her age as 20 years and this part was corroborated by 2, the mother of the victim. However, from the evidence of P.W. 1, the father of the victim it appears that presently victim is aged about 18 years. As such, I hold that on the date of alleged offences, victim was major in age.
- 11. Point No. 2 and 3:- From the evidence of victim (P.W. 3) it reveals that on the day of incident, without informing her parents, she on her own went with the accused for visit to his maternal uncle's house at Duliajan and stayed there for four days. P.W. 1 and 2, being the parents of the victim in their evidence has corroborated above facts. From the evidence of P.W. 1 and 2, it reveals that while they met the victim at the P.S., she stated that she on her own went with the accused for visit to Duliajan. Thus there is nothing to show that either by enticing or by using force accused took the victim to Duliajan.
- So far the allegation of penetrative sexual assault, it appears that accused did not cohabit or misbehave with her at Duliajan and during that period she slept with the aunt of the accused. This part was also corroborated by PW 1 and 2. Before them also victim did not complain about any misbehave by the accused. So there is absolutely nothing in the evidence of P.W. 1, P.W. 2 and P.W. 3 implicating the accused with the alleged offence of abduction and aggravated penetrative sexual assault on the victim.
- 13. Considering above, I am of the opinion that prosecution has failed

to prove the ingredients of offence U/S 366 IPC and Section 6 of POCSO Act 2012 against the accused Sri Chulu Tanti. As such, accused Sri Chulu Tanti is acquitted from the charges U/S 366 IPC and Section 6 of POCSO Act 2012 and set at liberty forthwith.

- 14. Bail bond executed by the accused and his surety stand extended for another six months from today U/S 437-A Cr.P.C.
- 15. Considering the nature of the case, the matter is not referred to DLSA for granting compensation U/S 357 (A) Cr.P.C.
- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar U/S 365 Cr.P.C.
- 17. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 31st day of May 2018 Sivasagar.

Special Judge, Sivasagar:

## <u>APPENDIX</u>

- 1. Prosecution witnesses:
  - P.W.1 Sri Kalidas Tanti (Informant)
  - P.W.2 Smt. Lalita Tanti
  - P.W.3 Victim 'N'
- 2. <u>Defence witnesses</u> None
- 3. Court witnesses None
- 4. Exhibits by prosecution -
  - Exbt.1 FIR
  - Exbt.2 Statement of the victim U/S 164 Cr.P.C.

Special Judge, <u>Sivasagar</u>: