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

Present :- Sri K. Choudhury, Sessions Judge, Cachar, Silchar.

Spl. (POCSO) Case No : 10/2015.

U/S. 366/344 IPC R.W. Sec.4 of POCSO Act.

State of Assam......Complainant.

-Vs-

Rajsh Das.

S/O SudhirDas,

Vill. Masimpur. Silchar. ::::::: Accused person.

Charge framed on: - 08.09.2015.

Date of recording evidence: - 17-10-15, 04-12-15, 18-12-15, 20-06-16,

and 18-07-16.

Statement of the accused person recorded on: 18.07.16.

Argument heard on :- 03.08.2016.

Judgment delivered on :- 08-08-2016.

ADVOCATE APPEARED

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

For the defence :- Mr. N. Roy. Learned advocate.

JUDGMENT

1. Prosecution case in brief is that on 06-08-13 at about 9.00 a.m. the minor daughter of the complainant, herein below mentioned as victim, a student of class VIII went out for school but did not return

back. During search it could be learn that, on that day she did not attend the school. It is alleged that somebody forcibly kidnapped the victim. Accordingly FIR was lodged on 07-08-13 which was registered as Silchar P.S. case No. 1694/13 U/s 366-A IPC.

- 2. the During investigation, victim was recovered from possession of the accused at Ahmedabad, Gujrat. Accused was arrested. The victim was medically examined. Her statement was also got recorded U/S 164 of Cr.P.C, where she stated that on the date of occurrence at about 9.00 a.m. on the way to her school the accused forcibly took her by an auto to Kalain from where she was taken to Shillong and Guwahati. She was kept on that night in a hotel at Guwahati where she was raped. On the following morning both of them got into train and went to Ahmedabad where she was kept confined in rented house and she was raped in every night forcibly. After that she was recovered by Police accompanied by her father. On completion of investigation I.O. submitted charge sheet against the accused U/S 366-A /344 IPC R.W. Sec. 4 of 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 charge against the accused U/S 366/344 IPC and also under Sec.4 of Protection of Children from Sexual Offence Act 2012 (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. and the victim who was declared hostile by the prosecution. It appears that defence did not take any plea at all in the cross examination of the material witnesses. However, in the cross examination of the MO defence plea is taken to the effect that the doctor noted down the history of the offence as per the statement of the father of the victim and the opinion is based on presumption. The accused in his examination U/S 313 of Cr.P.C. stated that the victim at her own instance went to Gujrat and the accused did not take her and evidence of doctor is false.

- 5. Now, the moot question for determination is whether, under the facts and circumstances of the case, the accused kidnapped the victim and committed penetrative sexual assault on the victim after wrongfully confining her in a house for many days.
- 6. To decide the above appoint 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.
- 7. PW. 1 Kajal Deb, the father of the victim deposed that the alleged occurrence took place in the month of August 2013 and at that time victim was reading in class VII in Surya Kumer M.E. School, Tarapur. On the date of occurrence the victim did not return from the school and for that search was made and police was also informed. Ext.1 is his FIR. After few days information was received to the effect that victim was taken to Gujrat. He then went to Gujrat and got her back from the house of one relative. It could be learnt that his own brother in law the accused took the victim to Gujrat for a trip. In the

cross examination he deposed that victim reported that accused took her for sight seeing and she was not taken forcibly.

- 8. That being the nature of cross examination the accused virtually admitted the taking away the victim to Gujrat. Further it is evident that the accused without giving any information to the guardian of the victim took her who apparently was a minor at that time.
- 9. PW. 2 Smti. Asha Deb the mother of the victim and own sister of the accused who corroborated the evidence of PW-1. According to her for non return of the victim on that day she made query to the school authority and could learn that victim did not attend the school. At that time victim was 12 years of age. In the cross examination she stated that after recovery victim reported that she at her own will went to Gujrat for sight seeing.
- 10. PW. 3 the victim deposed disclosing her age as 13. According to her on the date of alleged incident at 9 a.m. she came out from school and on the way the accused met her and told her to go to her aunt's house. Accordingly she went with him to Gujrat by train where she stayed 2/3 days in the house of one of her aunts by relation. Her father went there with police and got her back. Ext.2 is her statement made before the Magistrate. She denied the contents of the statements recorded by the Magistrate and also the contents of the history recorded by doctor. Both the above denial contents show that she gave statement implicating the accused to have committed rape. In the cross examination by the defence she stated that she at her own will went with the accused and out of fear she gave statement

before the police, Magistrate and doctor.

- 11. PW. 4 Dr. Orina Raha deposed that on 3/9/19 the victim was examined by her on police requistion and age told by the victim was 11 years. She recorded history of kidnapping of victim by the accused to Shillong, Guwhati and Ahmedabad and she was recovered by police and accused had physical relationship with her. The doctor opined her age above 14 and below 16.
- 12. PW. 5 Arun Kr. Mahata who is a neighbour of the complainant and adduced evidence mainly about the missing of the victim as a reported witness.
- 13. PW. 6 – Shipra Das the then class teacher of the victim. According to her evidence on 6/8/13 the victim did not attend the school which was reported to the police and the father of the victim. PW. 7 – IO Moni Singh deposed that on 7/8/13 while he was posted at Tarapur TOP father of the victim lodged eihar to the effect that victim was kidnapped by someone on 6/8/13. During investigation it could be learnt that victim was taken to Gujrat and accordingly on 28/8/13 he along with the father of the victim went to Gujrat North town. There from source they came to know that the accused along with the victim would visit mela. Accordingly accused was apprehended from mela and the victim was found with the accused. Victim was brought back and she was produced before doctor and Magistrate. completion of investigation he submitted charge sheet. In the cross examination he elucidated the circumstances under which the victim could be recovered from the possession of the accused from mela.

- 14. From the above discussions of evidence it is evident that the victim at the material time was a minor and the same is not denied categorically by the defence side. Visit of the victim along with the accused to Gujrat without consent of the guardian is also sufficiently established by corroborating and reliable evidence.
- 15. During argument ld. PP has submitted that although the prosecution witnesses have not supported the allegation of sexual assault but taking away of the victim by the accused to Gujrat is sufficiently established.
- 16. Ld. defence counsel submitted that going of a niece with her maternal uncle for sight seeing can not be treated as an offence within the meaning of section 366 IPC. According to the ld. defence counsel out of mis understanding the father of the victim lodged the ejhar against the accused. It is further argued that as per the victim and her parents victim at her own will and instance went to Gujrat to visit her aunt's house. If actually that be so, the question of lodging of FIR and recovery of the victim by police would not have arisen. evident that victim being a minor was found missing and there was no information for many days about her whereabouts. Had there been no ill intention accused being the own maternal uncle of the victim and having a visiting terms with the family of the victim he would have disclosed the matter to the parents of the victim without taking the victim from the road on the way to her school and that too to such a long distance like Ahmedabad, Gujrat. Further had he not bad intention he would have disclosed the matter at the earliest without keeping the parents of the victim in a stress and uncertainty. As the victim did not positively implicate the accused with the alleged sexual assault and

confinement but it is sufficiently established that she was taken without consent of the parents of the victim from their custody.

Therefore although the ingredients of section 366 IPC is not established for want of proof of particular intention envisaged therein but taking away of any minor from the lawful guardianship without consent would constitute an offence of kidnapping punishable u/s 363 IPC which being a lessor offence of similar nature with that of 366 IPC conviction under lessor section would not cause prejudice to the accused even in the absence of framing of charge under such section.

- 17. In view of the above discussions, findings and consideration of the evidence in its entirety it is held that the prosecution case is proved beyond all reasonable doubts u/s 363 IPC against the accused.
- 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 U/S 376 IPC R.W. 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 has got one year old baby son, wife and aged ailing parents and he has to maintain the entire family. Under such circumstances he has prayed for leniency. Having considering the above, very young age of the accused and also the intention of the material witnesses as revealed in their evidence, I am of the view that, under the facts and circumstances of this case, the accused instead of being sentence immediately should be released on probation of his conduct for a period

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of three years by executing a bond under the provision of Section 4 of

the Probation of Offenders Act, 1958 to the effect that he shall maintain

peace and good behaviour for the above period and shall appear to

receive sentence when called for.

20. No order of compensation is passed mainly on the ground

that the accused is the own maternal uncle of the victim and in case of

granting of any compensation may harm the reputation of the victim in

the society. Further, family of the victim is economically sound and does

not require any compensation for rehabilitation.

21. 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.

Judgment is pronounced and delivered in the open Court

under my seal and signature on this 8th day of August, 2016.

(Shri K. Choudhury)
Sessions Judge,

Cachar, Silchar.

Dictated & corrected by me.

(Shri K. Choudhury) Sessions Judge,

Cachar, Silchar.

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Sessions Case No. 10/2015.

APPENDIX

(A)	PROSECUTION	WITNESSES: -
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- PW. 1 Kajal Deb.
- PW. 2 Smti. Asha Deb.
- PW. 3 Smti Priyanka Deb.
- PW. 4 Dr. Orina Raha.
- PW. 5 Arun Kr. Mahata.
- PW. 6 Nirmal Kr. Das.
- PW. 7 Moni Singh.
- (B) <u>DEFENCE WITNESSES</u>: NIL.
- (C) <u>COURT WITNESSES</u>: NIL.

(D) PROSECUTION EXHIBITS: -

- Ext. 1 F.I.R.
- Ext. 1(1) Signature of P.W.1.
- Ext. 2 Statement U/s 164 Cr.P.C..
- Ext-2(1) & 2(2) Signature of P.W.3.
- Ext.-3: Medical examination report.
- Ext-3(1) Signature of P.W.1.
- Ext-3(2) Signature of P.W.3
- Ext-3(3)& 3(4) -Signature of P.W.4.
- Ext-3(5) Signature of Dr. Gunojit Das.
- Ext. 4 Sketch map.
- Ext. 4(1)— Signature of PW-7.
- Ext. 5 Charge sheet.
- Ext. 5 (1) Signature of PW-7.
- (E) <u>DEFENCE EXHIBITS</u>: NIL.
- (F) <u>COURT EXHIBITS</u>: NIL.
- (G) EXHIBITS PRODUCED BY WITNESSES: Nil.

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