IN THE COURT OF ADDL SPECIAL JUDGE ::KOKRAJHAR

Present :- Sri C. Chaturvedy,

SPECIAL CASE NO.63/2018 U/S.365 IPC, R/W Sec.4 of POCSO Act

STATE OF ASSAM

Vs

Sri Sonaram Kisku S/O Sri Jiban Kisku village- Rangapara P.S.Gossaigaon Dist. Kokrajhar

...... Accused.

Appearance: -

Learned Counsel for the State Mr. Manjit Ghosh, Special P.P.

Learned Counsel for the defence Mr. Shyam Tudu

Charge framed on 30.3.2019

Evidence recorded on 20.4.2019; 3.5.2019;

17.5.2019; 7.6.2019

Argument heard on 5.8.2019

Judgment pronounced on 16.8.2019

JUDGMENT

1. The case of the prosecution is that on 21.7.2018, xxx, father of the victim lodged an FIR with the In-charge of Simultapu Police Outpost alleging that his daughter, xxx, a minor girl has been abducted by accused Sonaram Kisku. The FIR was forwarded to Gossaigaon Police Station and a case U/S 366 IPC was registered.

- 2. Upon completion of the investigation, a charge sheet was laid against the accused Sonaram Kisku for commission of offence U/S 365 IPC, R/W Section Section 4 of the Protection of Children from Sexual Offences Act. The case was transferred to this Court for disposal.
- 3. The accused was summoned and on his appearance, copies of the relevant documents were furnished to him. After hearing both the sides charges under Section 365 IPC, R/W Section 4 of the POCSO Act was framed against the accused to which he pleaded not guilty and claimed trial.
- 4. In the course of trial, prosecution examined 7 witnesses. At the closure of prosecution evidence, the accused person was examined U/S 313 of the Cr.P.C. The defence plea is of total denial and the accused declined to adduce any evidence.

POINTS FOR DETERMINATION:

- (i) Whether the accused abducted the victim and confind her in a secret place ?
- (ii) Whether the accused committed penetrative sexual assault on the victim?

DECISION AND REASONS:

5. Pw-1 Sri xxx, the elder brother of victim, deposed that in the month of July, 2018, his sister xxx, the victim, aged about 13 years

and a student of Class-VII went missing from house. Initially, he thought that she has gone to her friend's house. After 2 days when victim did not return we started searching for her. He called his relatives but victim was not there. After about a week, his friend Sibulon Murmu informed him over phone that he has seen Urmila in the residence of accused at Rangapara village. He immediately went to the residence of accused but could not find his sister in the residence of accused. Thereafter, he lodged an FIR at Simultapu Police Out Post and after 3 days the victim was recovered. Pw 1 deposed that his sister told him that accused had forcefully abducted her.

- 6. In cross examiation Pw-1 deposed that he does not know the name of the writer of FIR. The FIR was typed in Gossaigaon Court complex. His statement U/S 161 Cr.PC was recorded in the Police Station. He admitted that he had not stated in his statement to police that Sibulon informed him that he had seen xxx, the victim, in the residence of accused. He also admitted that he had not stated before police that victim informed him that accused had forcefully abducted her.
- 7. Pw-2 xxx, is the father of the victim. He deposed that he came to know about the accused after his arrest in this case. In the month of July,2018 while he was away from home his daughter went missing. He searched for the victim in the residence of their relatives, but could not find her. After a week he came to know that

victim has been seen in village Rangagaon. He had gone to Rangagaon but there also he could not find Urmila. Thereafter, his son lodged an FIR and later, police recovered his daughter. After recovery, his daughter told that she was abducted by the accused and kept in a separate place other than his residence.

- 8. In cross-examination PW-2 deposed that the distance between Chandrapur and Rangagaon is about 2 miles. He does not remember the name of person who informed that Urmila Soren has been seen at Rangagaon village.
- 9. Pw-3 Benjamin Kisku deposed that he learnt that about 9/10 months back that accused had taken away the victim. In this regard, the brother of victim had loged an FIR and later police recovered the victim.
- 10. Pw-4 Sri Bilian Mardi deposed that he know Dilip Soren. He does not know Sonaram Kisku. About 9 months back, he had heard there is a dispute relating to Urmilla Soren and her birth certificate has been seized by police. Dilip Soren asked me to accompany him to Police Station. Accordingly, he had gone to the Simultapu Police Out Post and put my signature on the Seizure list. Exhibit-2(2) is his signature.
- 11. In cross examination Pw-4 deposed that he does not know why his signature was taken in Exhibit-2. He had personally not read the contents of birth certificate.

- 12. Pw-5 is the victim of this case. She deposed that in the month of July, 2018, she had gone to the residence of her relative at Gurufella. Accused too had gone to the residence of his relative at Gurufella. She deposed that she and accused were talking to each other. She also deposed that accused told her that he would marry me only when I attained majority.
- 13. At this stage, the learned Special P.P sought leave of the Court to declare the witness as hostile. On perusal of the statement of the witness under Section 16 CRPC, leave was granted.
- 14. In cross-examination by the Special P.P, pw 5 deposed that she had given a statement under Section 164 CrPC. Ext 3 is the statement and Ext 3 (1)(2)(3) are her signatures. She admitted that she had made a statement in Ext 3 that she had eloped with Sonaram Kisku in the month of Apil, 2018 but her parents brought me back. She also deposed that she also stated that she had made a statement in Ext 3 that on 7.7.2018 again she eloped with Sonaram and stayed with him for 20 days. She denied the suggestion that she made a statement that she had sexual relationship with accused. Pw 5 also deposed in her cross examination by learned Special P.P that she made certain statements before the Magistrate because she was afraid of Police.
- 15. In her cross examination by defence pw 5 deposed that when she was produced in the Court, her parents accompanied her. She categorically admitted that accused never committed any sexual

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intercourse with me and that she made the statement under Section

164 CrPC because of fear of my parents.

16. The other evidence need not be reproduced her since the

principal prosecution witness has not supported the case of

prosecution. The evidence of pw 5 does not implicate the accused in

any manner so far as the charges are concerned. There is no

evidence that accused had any sexual relationship with the victim

nor is there any evidence that accused abducted the victim and

confined her in a secret place. So being the evidence on record, no

onus shift on the accused to prove otherwise.

17. The points for determination are answered in negative.

ORDER

Accused Sonaram Kisku is acquitted of the charges under

Section 365 IPC read with Section 4 of the POCSO Act and set

at liberty forthwith.

Given under the hand and seal of this Court on this 16th

day of August, 2019.

Dictated by

Addl. Special Judge Kokrajhar Addl Special Judge Kokrajhar

<u>Appendix</u>

1. Prosecution Exhibits:-

Exhibit-1 FIR

Exhibit-2 Seizure list Exhibit-3 Statement

Exhibit-4 Birth certificate
Exhibit-5 Medical report

2. <u>Defence Exhibit</u> Nil

3. Prosecution Witness

P.W.1 Sri xxx, brother of victim
P.W.2 Sri xxx, father of victim

P.W.3 Benjamin Kisku P.W.4 Sri Bilian Mardi

P.W.5 victim

P.W.6 Smt. Sriti Kisku

P.W.7 Dr. Manisha Boro Phukan

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4. <u>Defence Witness</u> Nil

5. <u>Court witness</u> Nil

Addl. Special Judge(FTC), Kokrajhar