

FORM-A	
IN THE COURT OF THE ADHOC ADDL. SESSIONS JUDGE-CUM- FAST TRACK SPECIAL COURT, UNDER POCSO ACT, PURI.	
Present :	
Shri Ramanath Panda, Adhoc Addl. Sessions Judge, (Fast Track Special Court), Puri.	
(JO CODE No. OD 90024)	
<u>T.R.No.38/102 of 2023/2020</u>	
(Arising out of Special G.R. Case No.61 of 2017 corresponding to Pipili P.S. Case No.271/2017)	
(Details of FIR/Crime and Police Station)	
Complainant	State of Orissa through Victim
Represented by	Sri Bahana Parida, Addl. Public Prosecutor
Accused	Niranjan Mallick, aged about 32 years, S/o.Purna Chandra Mallick of vill-Purohitpur, P.S.Pipili, Dist.Puri.
Represented	Shri B.Mishra & Associates, Advocates.

FORM-B

Date of Offence	In the year 2014
Date of F.I.R.	23.08.2017
Date of Charge sheet	30.10.2020
Date of framing of Charges	18.11.2021
Date of commencement of evidence	23.08.2024
Date on which judgment is reserved	23.08.2024
Date of the Judgment	13.09.2024
Date of sentencing Order, if any	No

Accused Details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428 Cr.P.C.
1.	Niranjan Mallick	09.08.20	08.04.21	U/s.376(2)(n)/506 of the I.P.C., Section 6 of POCSO Act, 2012 & Sec.66A/66E/67/67A of I.T. Act, 2008	Acquitted	N.A.	

JUDGMENT

The accused stands charged for having committed offence punishable U/ss.376(2)(n)/506 of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act,2012 and Section 66A/66E/67/67A of the Information Technology Act,2008.

2. The case of the prosecution is that the accused kept physical relationship with the victim when the victim was aged 17 years. H enticed her in the guise of establishing a love relationship and accordingly called lthe victim to his house where he committed sexual assault forcibly on her. He also stook obscene photographs while committing the crime without her knowledge. Susequently he threatened her lto transmit the same in social media in case she refused to keep physical relationship witwh him. Accordingly out of fear the victim kept physical relationship with him time and again

informant's daughter aged 15 years was found missing on 03.04.2019. While searching for the victim she could know that the accused had kidnapped the victim. On this written information I.I.C., Kumbharpada police station registered P.S. Case No.73 of 2019 and directed S.I., A.Behera to take up investigation. After investigation he submitted charge-sheet against the accused.

3. The defence plea is one of complete denial.

4. The following points arise for consideration in the present case.

- (i) Whether the accused on 03.04.2019 at 3.30 P.M. kidnapped the victim a minor girl aged 15 years from out of keeping of her lawful guardianship without the consent of the guardian?

- (ii) Whether the accused on the same date, time and place kidnapped the victim with an intention to secretly and wrongfully confined her at Kolkata?
- (iii) Whether the accused on the same date, time and place kidnapped the victim with an intention that she may be compelled to marry against her will or in order that she may be forced or seduced to illicit intercourse or knowing it likely that she will be forced or seduced to illicit intercourse?
- (iv) Whether the accused in between 03.04.2019 and 08.04.2019 committed rape on the victim repeatedly?
- (v) Whether the accused in between 03.04.2019 and 08.04.2019 committed rape repeatedly on the victim a girl under 16 years of age?
- (vi) Whether the accused in between 03.04.2019 and 08.04.2019 committed aggravated penetrative sexual assault on the victim a girl aged 15 years?

5. In order to establish the charges, the prosecution has examined four witnesses including the victim as P.W.4. The prosecution has proved in evidence some documents marked as Exts.P-1 to P-7.

6. It is the case of the prosecution that the accused on 03.04.2019 at 3.30 P.M. kidnapped the victim from keeping of her lawful guardianship. She was taken to Kolkata where she was kept confined for certain days and during the period of confinement she was subjected to sexual assault. As the victim was aged only 15 years and subjected to sexual intercourse repeatedly charge was framed against the accused U/s.376(2)(n)/376(3) of I.P.C. and Section 6 of the POCSO Act. The victim is examined as P.W.4. She deposed on 13.05.2024 disclosing her age 20 years. The incident took place in the year 2019. So five years before she was 15 years of age. P.W.2 is the informant. She has stated that she lodged

F.I.R. as the victim was found missing. Ext.P-1 is the F.I.R. Police seized the birth certificate of the victim along with one photograph under Ext.P-2. The birth certificate is proved in evidence as Ext.P-3. In the birth certificate the date of birth of the victim is written as 03.01.2004. The incident took place in 2019. So the victim was aged 15 years 3 months at the time of incident. As the birth certificate is the most reliable document to determine the age, I rely upon the same and conclude that the victim was a child within the meaning of Section 2(d) of the POCSO Act,2012.

7. The victim examined as P.W.4 has stated that she has married to the accused. She is now leading a happy conjugal life. She was sent to court where her statement was recorded U/s.164 Cr.P.C. vide Ext.P-5. She was also medically examined on police requisition and she has signed on the medical report vide Ext.P-4/1. Police seized her wearing apparels under seizure list marked Ext.P-6. She denied the suggestion put to her by the learned counsel for the prosecution U/s.154 of Evidence Act that she had stated earlier to police and before learned Magistrate that the accused kidnapped her and sexually assaulted her. In cross-examination she says that the accused is her husband. Marriage was solemnised after she attained majority. Prior to marriage there was no physical relationship between her and the accused. She was never kidnapped. P.W.2 is the informant. She has only stated about lodging of F.I.R. and seizure of birth certificate by the police. In cross-examination she says that the accused has not kidnapped the victim. He has not sexually assaulted her before marriage. She denied the suggestion put to her by the learned counsel for the prosecution that she had also stated to police that the accused kidnapped the victim. P.Ws.1 & 3 turned hostile to the prosecution.

Learned counsel for the prosecution submitted that subsequent to the incident the accused married the victim and this is the reason the victim is reluctant to say against the accused. The counsel for the accused submitted that the informant and the victim are the two vital witnesses to the case who turned hostile to the prosecution. The previous statement to police and Magistrate is not evidence. Since those witnesses clearly deposed in Court that there was no specific relationship between the accused and the victim prior to the marriage the Court has no option than to rely upon the said evidence. The evidence does not implicate the accused with the alleged charges.

On consideration of the materials as discussed above I find that the victim and the informant turned hostile to the prosecution. The facts relating to kidnapping and sexual assault is denied by them in evidence. So there is absolutely no material to say that the victim earlier to her marriage was kidnapped by the accused and was subjected to sexual assault.

8. In the result, I hold the accused not guilty for the commission of offence punishable U/s.376(2)(n)/506 of the I.P.C. read with Section 6 of the POCSO Act,2012 and Section 66A/66E/67/67A of the I.T.Act,2008 acquit him therefrom as per the provision of Section 235(1) of the Cr.P.C. He be set at liberty forthwith.

9. The zimanama be cancelled and the seized articles be destroyed after the appeal period is over or in case no appeal is preferred and in case of appeal, as per the order of the Appellate Court.

**Adhoc Addl. Sessions Judge,
(FTSC) under POCSO Act, Puri.**

This Judgment is typed to my dictation, corrected by me and pronounced in the open Court on this the 10th day of September, 2024, given under my hand and seal of this Court.

**Adhoc Addl. Sessions Judge,
(FTSC) under POCSO Act, Puri.**

FORM-C.

LIST OF PROSECUTION/DEFENCE/COURT WITNESS		
A. Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	Arakhita Behera	Victim's father
P.W.2	Victim	Victim
B. Defence Witnesses, if any.		
RANK	NAME	NATURE OF EVIDENCE
-	-	-
C. Court witnesses, if any		
RANK	NAME	NATURE OF EVIDENCE
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS.		
A. Prosecution Exhibits.		
Sl.No	Exhibits number	Description
1	Ext.1	F.I..
2	Ext.1/1	Signature of P.W.2 in Ext.1
3	Ext.2	Statement of P.W.2 recorded U/s.164 Cr.P.C.
4	Ext.2/1	Signature of P.W.2 in Ext.2.
5	Ext.3	Signature of P.W.2 in Medical examination report.
6	Ext.4	Seizure list
7	Ext.4/1	Signature of P.W.2 in Ext.4
8	Ext.5	Seizure list
9	Ext.5/1	Signature of P.W.2 in Ext.5

10	Ext.6	Zimanama
11	Ext.6/1	Signature of P.W.2 in Ext.6
12	Ext.7	Xerox copy of board certificate
13	Ext.8	Seizure list
14	Ext.8/1	Signature of P.W.2 in Ext.8
15	<u>Ext.9</u>	<u>Zimanama</u>
<u>16</u>	<u>Ext.9/1</u>	<u>Signature of P.W.2 in Ext.9</u>
<u>17</u>	<u>Ext.3/1</u>	<u>Medical examination report of victim.</u>
<u>18</u>	<u>Ext.10</u>	<u>Medical examination report of accused.</u>
B. Defence Exhibits.		
Sl.No	Exhibits number	Description
-	-	-
C. Court Exhibits, if any		
Sl.No	Exhibits number	Description
-	-	-
D. Material Objects.		
Sl.No	Material Object Number	Description
-	-	-

**Ad hoc Addl. Sessions Judge,
(FTSC) under POCSO Act, Puri.**

