3 IN THE COURT OF THE SPECIAL JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U. Ahmed, AJS,

Special Judge, Karbi Anglong, Diphu.

POCSO Case No.15/2018(Special) corresponding to GR Case No.384/2018 & Bokajan Police Station Case No.77/2018 Under Section 363 of IPC and 4 of the

POCSO Act.

State of Assam

Versus

Shri Dipak Jaiswal....Accd person

Name of informant/complainant: Shri Nitai Acharjee

S/O Late Chandra Sekhar Acharjee,

Bokajan Town, Ward No.6,

PS: Bokajanm

District-Karbi Anglong.

Name of the accused person facing trial:

Shri Dipak Jaiswal

S/O Shri Daya Jaiswal,

Vill-Majbat,

PS:Majbat

District-Udalguri, BTAD, Assam.

## Advocates appeared:

For the prosecution : Mr. D. Deka, Public Prosecutor.

For the defence : Mrs R. Bharali.

Argument heard on : 31.8.2019.

Judgment pronounced & delivered on: 31.8.2019.

## **JUDGMENT**

- 1. It is a case of kidnapping and penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 13.4.2018, the informant-Shri Nitai Acharjee lodged an ejahar with the O/C of Bokajan Police Station stating inter alia that on 26.3.2018 at about 10-30 AM, his daughter-Smti. Nikita Acharjee aged 18 years went to Karbi Anglong Eastern College, Sariahjan for appearing examination and since then she has been missing.
- 3. On receipt of the ejahar, O/C Bokajan Police Station registered a case vide its PS case No.77/2018 under section 363 of IPC. On completion of investigation, I.O. submitted the charge-sheet under section 363 of IPC R/W Sec.8 of the POCSO Act against the accused person.
- 4. On completion of appearance of the accused person, copy was furnished to him. On perusal of the case record along with case diary and after hearing learned lawyers of both sides, I found sufficient grounds for presuming that the accused person committed the offences under sections 363 of IPC and 4 of the POCSO Act. Accordingly, the charges were framed. The particulars of the charged offences were duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 5. Prosecution has examined as many as five witnesses including the informant and the alleged victim. Statement of the accused person was recorded under section 313 of Cr.P.C. Defence declined to adduce evidence. Plea of defence is of total denial.
- 6. Points for determination are:
  - (i)Whether the accused person on 26.3.2018

at Sariahjan under Bokajan Police Station kidnapped Smti. Nikita Acharjee aged 17 years from the lawful guardianship of the informant and that he thereby committed an offence punishable under section 363 of IPC?

(ii) Whether the accused person on the same date, time and place caused penetrative sexual assault to the victim, Smti. Nikita Acharjee and that he thereby committed an offence punishable under section 4 of the POCSO Act?

## 7. Decisions and reasons thereof:

I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. At the very outset, the learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove the case against the accused person. On the other hand, the learned Public Prosecutor, Mr. D.K. Deka refuting the aforesaid submission has submitted that the prosecution has succeeded in establishing its case against the accused person beyond all reasonable doubts. Prior to rebutting the rival submissions, it would be appropriate to give a glance at evidence record.

8. PW-1 is Shri Nitai Acharjee who deposed that he is the informant of this case. The victim is his daughter and the accused is known to him. The incident occurred in the month of March, 2018. At the time of occurrence, his daughter was studying in higher secondary classes in Eastern College, Sariahjan. On the day of occurrence, his daughter went to college for appearing examination. As she did not come back after the examination, they started searching her. Finding no any clue of her

whereabouts, he lodged the ejahar at Bokajan Police Station. After about one month of the occurrence, the victim and the accused appeared in the Police Station. Ext.1 is the ejahar and Ext.1(1) is his signature. Thereafter, police arrested the accused person. The police got the victim medically examined and her statement recorded through the Court. At the time of occurrence, the victim was 18(eighteen) years old. On his question that as to why she eloped with the accused person, she replied that as he failed to afford the educational cost, she left with the accused person. In cross-examination, he deposed that he lodged the ejahar in the matter of missing of his daughter. After leaving the house, the victim got her admitted in a college in Bangaluru. He does not know as to where the victim was acquainted with the accused person. The accused is not involved with the occurrence. He has no any allegation against the accused person. He has also no any objection if the accused is acquitted of this case.

9. PW-2 is Smti. Rina Acharjee who deposed that the informant is her husband and the victim is her daughter. She knows the accused person. The occurrence took place in the year 2018. On the day of occurrence, the victim went to attend examination, but she did not return. Prior to the date of occurrence, the victim told that she would go to Bangaluru to further study, but as her father told that he would not be able to afford educational cost, she quarrelled with him. After about one month of the occurrence, the victim and the accused appeared at Bokajan Police Station. Police arrested the accused person and got the victim medically examined and her statement recorded in the Court. At the time of occurrence, the victim was 18(eighteen) years old. On her return from Bangaluru, the victim told her that she stayed in a rented house at Banagaluru and the accused helped her from all corners. In crossexamination, PW-2 told that the victim went to Bangaluru at her own will. The accused did not elope her. At present, the victim is studying in Bangaluru. She has no any complaint against the accused person.

- 10. PW-3 is Shri Paban Gogoi who told that he knows the informant and the victim. He does not know the accused person. About one and half years back, the informant told him that his daughter, Miss Nikita Acharjee got missing while she went to college. Later, he told him that the victim was recovered. In cross-examination, he stated that he came to know that at the time of occurrence, the victim was reading in college and at that time, the victim was about 19 years old.
- 11. PW-4 is Dr Atreyee Goswami who told that on examination of the victim, she found hymen absent and found no injury on her body. According to Radiologist, Dr. Bimal Hanse, the age of victim is above 18 years. She found no spermatozoa on the smear. Ext.2 is the medical report and Ext.2(1) and 2(2) is his signatures.
- 12. PW-5 is Shri Rabin Timung who is the I.O. of this case. During investigation, he went to the place of occurrence, drew a sketch map of the PO, got the victim examined by the doctor and her statement recorded in the Court. On 21.6.2018 he arrested the accused, Dipak Joyswal and recorded his statement. On the basis of the statement of the victim, he prayed before the Court to allow him to add the Section 8 of the POCSO Act and accordingly, his prayer was allowed. He seized the birth certificate and identity card of the victim in presence of the witnesses. Ext.4 is the seizure list and Ext.4(1) is his signature. M.Ext.1 is the birth certificate of the victim and M.Ext.2 is the identity card issued by the authority of Bidyasagar High School and he could identify the same on the day of his deposition in the Court. He collected the medical report of the victim and the copy of the statement recorded in the Court. On completion of his investigation, he found sufficient materials against the accused person to be involved with the occurrence, and accordingly, he submitted charge-sheet under sections 363 of IPC and 8 of the POCSO Act. Ext.5 is the charge-sheet and Ext.5(1) is his signature. In cross-examination, he denied the suggestions that he had falsely submitted the charge-sheet

against the accused person and he did not investigate the case properly.

- 13. PW-6 is Miss Nikita Acharyjee who testified in her evidence that the incident occurred about one and half years ago. At the time of occurrence, she was 18(eighteen) years old and she, after completing 12 standard examination, wanted to prosecute her study outside Assam. But as her father did not allow her to do so, she on the day of occurrence without informing anybody left for Bangaluru alone. In Bangaluru, she did job and studied. The accused is her friend and at the time of occurrence, he stayed in Bangaluru. On reaching Bangaluru, she met the accused and he helped her in searching PG. Still she is in the PG in Bangaluru. She and the accused came back to Bokajan and arrived at Bokajan Police Station. Thereafter, the police got her medically examined and her statement recorded in the Court. Ext.6 is her statement and Ext.6(1) to 6(3) are her signature. During her cross-examination, she stated that as she came to know that her father lodged the ejahar, she herself appeared in the police station. The accused did not help in any away while she was going to Bangaluru from Bokajan. This is all about the prosecution evidence.
- 14. I have perused the entire evidence on record. PW-1 who is the informant and father of the victim did not implicate the accused either in his ejahar or in his deposition. PW-2 is the mother of the alleged victim who also told that the accused did not elope her daughter, rather her daughter willfully went to Bangaluru. Medical evidence of doctor does not say anything as to the ingredients of section 4 of the POCSO Act. PW-6 is the alleged victim whose testimony does not implicate the accused person at all. Since the ingredients of sections 363 of IPC and 4 of the POCSO Act are not proved at all against the accused person, he deserves acquittal.

## ORDER

15. In the result, I hold that the prosecution has failed to prove its Contd....7/-

case against the accused person beyond all reasonable doubts. Hence, on benefit of doubt, the accused, Shri Dipak Joiswal is hereby acquitted from the charges brought against him and let him set at liberty forthwith.

- 16. Let the seized birth certificate be returned to the person from whom it was seized in due course of law. Accordingly, this case is disposed of.
- 17. Given under hand and seal of this Court today, the 31<sup>st</sup> day of August, 2019.

Dictated and corrected by me.

Special Judge, Karbi Anglong, Diphu. Special Judge, Karbi Anglong, Diphu.

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