IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Sessions Judge, Karbi Anglong, Diphu.

Under Section 12 of the POCSO Act.

Special Case No. 05/2017 corresponding to GR Case No.420/2017 & Dillai Police Station Case No. 10/2017

State of Assam Versus

Md Kabir Ahmed, Accused

Name of informant/complainant: Shri Ren Sing Timung

Name of the accused person facing trial:

Shri Kabir Ahmed

S/o :- Late Rohmad Ali

Vill-Dakhin Samari Ali, Choudhury Bazar

P.S : Morajhar District: Hojai.

Advocates appeared:

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

For the defence : Ms Ruby Sarkar

Argument heard on: 03.11.2018.

Judgment pronounced & delivered on: 14.11.2017

JUDGMENT

1. It is a case of sexual harassment alleged to have been committed by the accused to Miss Ganga Singnerpi while she was going to Dillai Bazar under Dillai Police Station.

- 2. The prosecution case in brief is that on 11.6.2017, the informant-Shri Rensing Timung lodged an ejahar with Dillai Police Station stating inter alia that on 09.6.2017 at about 2 PM his sister, Miss Ganga Singnerpi aged about 14 years went to Dillai Bazar for shopping. As she did not come back from the bazar, they started searching her, but they did not find any clue of her whereabouts.
- On receipt of the ejahar, O/C, Dillai Police Station registered a PS Case No.10/2017 U/S 3663/370(A) of IPC. On completion of investigation of the case, the Investigating Police Officer submitted charge-sheet U/S 363 of IPC R/W Se.4 of the POCSO Act against the accused person.
- 4. On completion of appearance of the accused person, copy was furnished to him. After hearing learned counsels of both sides as well as case diary, charge U/S 12 of the POCSO Act against the accused person was framed. The particular of the charged offense was duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- Prosecution has examined as many as eight witnesses.
 Statement of accused U/S 313 of Cr.P.C. was recorded.
 Defence declined to adduce evidence.

6. **Point for determination**

7. Whether the accused person on 09.6.2017 at about 2 PM at the area of Dillai Bazar under Dillai Police Station caused sexual harassment to Miss Ganga Singnerpi aged about 14 years and that he thereby committed an offense punishable U/S 12 of the POCSO Act?

8. **Decisions and reasons thereof:**

- 9. I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record. Learned counsel appearing on behalf of the accused person has contended that the prosecution has miserably failed to prove its case against the accused person beyond all reasonable doubts. 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.
- 10. PW1-Shri Rensing Timung is the informant of this case who stated that the occurrence took place in the year 2017. On the day of occurrence, while his sister, Ganga Singnarpi did not come back from school, the started searching her. As her whereabouts could not be traced out, he lodged an ejahar at Dillai Police Station. Ext.1 is ejahar and Ext.1(1) is his signature. One of his friends informed him that accused lured his sister away. He collected the phone number of the accused and gave it to police. Accused informed him that he kidnapped his sister. Police could find the clue of accused at Sivasagar. He along with his brother, Kemsing Timung and police went to Sivasagar. Before reaching Sivasagar police station, police had already apprehended the victim and accused and kept them at police station. On the third day of his sister's missing, police recovered her. Thereafter, they came back to Dillai Police station. Police of Dillai PS got the victim examined and her statement recorded in the court. The Court handed over the victim to him. At the time of

- occurrence, age of the victim was 14 years. The victim informed him that accused took her to Sivasagar forcibly by the train and bus. Although the victim was not in love with the accused person, but they stayed for three days as husband and wife.
- Shri Kemsing Timug deposed that he knows the 11. informant, accused and the victim. The occurrence took place in the year 2013. The informant informed him that the victim on the previous day went to Dillai market and did not come back. He advised the informant to search her and he also started searching. After two days of the occurrence, the informant lodged the ejahar. A friend of the accused informed that the accused eloped the victim. They collected the phone number of the accused from his friend and gave it to police. Through the mobile number police could locate that the accused was staying at Sivasagar. Thereafter, police took him and the informant to Naziram Police Station. Accused along with the victim appeared at Nazira Police Station as they knew that police were searching them. Thereafter, police of Dillai PS took the accused and victim back to Dillai and they also came with them. At the time of occurrence, victim attained the age of 14-15 years.
- 12. PW-3, Smti. Sika Singnarpi deposed that she knows the informant who is her brother. She also knows the victim. He does not know the accused person. The incident took place in the year 2017. On the day of occurrence, the victim went to Dillai market. As she did not return home, they searched her. Later she came to know that the accused eloped the victim. At that time, the victim was 14 years old. Later they could know that the accused took the victim to Sivasagar. They went to Sivasagar in search of the victim. By that time, police left for Sivasagar and after recovery, police took the victim and accused to Dillai Police

- Station. On her interrogation, the victim told that she and accused used to stay at Sivasagar as husband and wife and she(victim) informed her(PW-3) that there occurred physical contact between them. Later, police took the victim to Diphu Civil Hospital for her medical examination and caused the statement of the victim recorded in the Court.
- 13. PW-4, Shri Rocket Timung deposed that he knows informant and the victim. He does not know the accused. The occurrence took place in the month of July, 2017. At the time of occurrence, he was at Diphu. On the subsequent day of the occurrence, the informant informed him about the missing of his sister, Ganga Singnarpi. At the time of occurrence, the victim was 14 years old. Police could locate the whereabouts of the accused in Sivasagar. Accordingly, he and informant went to Sivasagar and stayed in a hotel. On the next day morning, when he and the informant went out for morning walk, they saw the accused and victim coming on a rickshaw. After a while, police of Nazira PS arrived there and apprehended them and handed over them to Sivasagar Police Station. Thereafter, police of Dillai PS arrived at Sivasagar Police Station and took them to Dillai Police Station. PW-4 further stated that the accused who was present on the day of his deposition kidnapped the victim.
- 14. PW-5, Shri Ramjan Uddin is a co-driver of the accused. They lived together. Initially, he did not know about the occurrence. On the third day of the occurrence when the village people insisted him for whereabouts of the accused, then he rang him over phone. The accused informed him that he was staying at Sivasagar along with the victim. He gave the phone number of the accused to the villagers and then police arrested the accused person.

- 15. PW-6 is Dr. Minakshi Terangpi deposed that on 14.6.2017 she examined Smti. Ganga Singnarpi under police requisition in connection with Dillai Police Station Case No.10/2017. She stated that the victim gave history of sexual intercourse with that person. On examination, she found her hymen torn. She found the victim pregnant following the test done for pregnancy. She found dry smear of posterior swab for spermatozoa, but no spermatozoa was detected. She found no injury on her private part or other parts of body. As per report of USG of full abdomen, the victim was pregnant. PW-6 could not be ascertained as to the age of the victim as there is contra indication of X-ray during pregnancy. Ext.2 is the medical report and Ext.2(1) is my signature.
- 16. PW-7 is Miss Ganga Singnarpi is the alleged victim of this case who deposed that the informant is her brother and she could identify the accused person. The incident occurred before the election of 2017. On the day of occurrence, she went to Dillai bazar and in the bazar, she met the accused. He proposed her for a journey and he got her boarded in a vehicle. At that time, the accused tied a talisman on her right hand and thereafter, she lost her normal intuition. Then they moved to Dimapur by the said vehicle and from there they left for Sivasagar by train. From Sivasagar, the accused took her to Nazira and kept her in a her in a house for two/three days. No other persons stayed there except them. During those days, accused did not make any physical contact(Beya Kam) with her. Thereafter, police apprehended them and took them to Nazira Police Station. Police personnel of Dillai PS took them to Dillai and got her medically examined at Diphu Civil Hospital and her statement recorded in the Court. Ext.6 is her statement and Ext.6(1) and 6(2) are her signature. At the time of occurrence, she was 13 years old.

- 17. PW-8, Shri Kalpajit Sharma is the investigating police officer of this case. He investigated the case as per procedures laid down in Cr.P.C. and on completion of the investigation, he had submitted the charge-sheet U/S 366 of IPC and 4 of the POCSO Act against the accused person. Ext.5 is charge-sheet and Ext.5 (1) is his signature. He also exhibited the seizure list as Ext.4 and 4(1) is his signature.
- 18. For attracting the sections 363 IPC and 12 of the POCSO Act, the victim child needs to be below 18 years. PW-1 to PW-4 are the nearest relatives of the victim child and all of them categorically have stated that at the time of occurrence, she was 13 to 15 years old. PW-6 is the medical officer who has stated that he could not ascertain the actual age of the victim due to contra indication of X-Ray during pregnancy. The victim child has stated in her evidence that she was 13 years at the time of occurrence. During the cross-examination of PW-1 to PW-4 including the victim child marked as PW-7, no suggestion was put forward by the defence denying that the victim child at the time of occurrence was above 18 years. In view of the discussion made above it can be held that at the time of occurrence, the victim child was below 18 years.
- 19. PW-1 is the informant who is the elder brother of the victim child. His evidence shows that police of Dillai Police Station after knowing that the accused was in Sivsagar with the victim child went there with him and his cousin named Kemsing Timung. Reaching there they found that police from Sivsagar Police Station already had taken the accused and the victim child to Sivsagar Police Station. The victim was with the accused person for three days and at that time she was 14 years old. After recovery, the victim child was given to his custody. According to PW-2, the victim child and the accused were caught by police of

- Nazira Police Station. His evidence also shows that the victim child was 14/15 years old. From the evidence of PW-3 and PW-4 it appearance that the police caught the accused and the victim child together.
- 20. In this case the victim child is the most vital witness who has stated in her deposition that on the day of occurrence she met the accused at Dillai Bazar where from the accused picked up her to a motor vehicle saying that he would take her for roaming. After settling in the vehicle, the accused tied a Tabij on her hand and there after she became speechless. First the accused took her to Dimapur in a motor vehicle and there from she was taken to Sivsagar in Train. From Sivsagar she was taken to Nazira wherein she was kept in a rented house for two days. The police from Nazira after apprehending the accused with the victm child to Nazira Police Station where from they were taken to Dillai Police Station by their police personnel. Only suggestion put forwarded during cross-examination of the victim child that she fled away with the accused person on her sweet will. Evidence of the victim child clearly shows that she did not raise any sort of shouting on the way from Dillai Bazar to Nazira and that she got into motor vehicle in Dillai Bazar on her sweet will.
- 21. PW-8 is the investigating officer who has clearly stated in his evidence that the accused and the victim were caught by the police from Nazira Police Station. Now it has become crystal clear that the accused took to Nazira where he kept the victim child for two days. Minor consent amounts to no consent. There is no evidence on record showing that the accused took the victim child with consent of her guardian. Ext-6 is statement of the victim child recorded under section 164 of the CrPC which shows that she did not intend to go with the accused far away.

- 22. The victim child has clearly stated in her evidence that the accused did not commit any foul with her though the medical report marked shows that she was carrying 19 week pregnancy. The victim child did not disclose by whom she became pregnant. Her evidence does not show that prior to the occurrence she had any love affair with the accused.
- 23. The word "sexual harassment" is defined in the section 11 of the POCSO Act which reads thus-" 11. Sexual harassment.-A person is said to commit sexual harassment upon a child when such person with sexual intent,- i. any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or ii. makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or iii. shows any object to a child in any form or media for pornographic purposes; or iv. repeatedly or constantly follows or watches or contacts a child either directly digital or through electronic, any other threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or vi. entices a child for pornographic purposes or gives gratification therefore. Explanation. - Any question which involves "sexual intent" shall be a question of fact."
- 24. The section 12 of the POCSO Act relates to commission of sexual harassment which is defined in the section 11 of the POCSO Act. In view of discussion made above I find that the prosecution has failed to its case under section 12 of the POCSO Act.

- 25. Section 363 of the IPC relates to punishment for kidnapping minor from their legal guardian which reads thus:-" 363. Punishment for kidnapping.— Whoever kidnaps any person from 1[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."
- 26. The section 361 of IPC relax to kidnapping from the lawful guardianship which reads thus:-" 36. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful quardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person. (Exception) —This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

27. However I find that the prosecution has succeeded in establishing its case under section 363 of the IPC against the accused beyond all reasonable doubts.

Order

- 28. In the result I find the accused person Kabir Ahmed guilty under section 363 of the IPC and according he is convicted.
- 29. On the point of sentence, the accused is heard and to that effect his statement is recorded. The Ld lawyer on behalf of the accused has submitted that accused is coming from a humble back ground who is to look after his entire family consisting his old age mother, sister and brothers and as such the accused is deserved to be punished leniently. The accused is just young man and there is a no evidence on record showing that earlier convicted by the court of law. There are sufficient time for the accused for reform. Taking all aspect into consideration as well as fact of the case I am of the opinion that the accused is deserve to be punished leniently. Accordingly I do hereby asked the accused to suffer SI of 4 (Four) months and to pay fine of Rs. 5000/- (Rupees Five Thousand) i/d SI of 1(One) month. Set off his earlier detention period. Let a certify copy of the Judgment and order to the accused is free of cost. Let the fine money be paid to the victim if realized. No recommendation for compensation under section 357A of the CrPC is made. Accordingly the case is dispose of on contest.

Dictated and corrected by me.

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

Dictation taken and

Transcribed by me.

Stenographer Grade-I.

APPENDIX

Prosecution witnesses:

PW1-Shri Rensing Timung

PW-2 is victim girl statement.

PW-3, Smti. Sika Singnarpi

PW-4, Shri Rocket Timung

PW-5, Shri Ramjan

PW-6 is Dr. Minakshi Terangpi

PW-7 is Miss Gonga Singnarpi

PW-8 is OC Kalpajit Sharma

<u>Defence witnesses:</u> Nil.

Prosecution exhibits:

Ext-1 is Ejahaar

Ext-2 is Medical Report

Ext-3 is Sketch Map

Ext-4 is Seizure List

Ext-5 is Charge Sheet.

Ext-6 is Victim's statement

Defence Exhibited: Nil

Sessions Judge, Karbi Anglong, Diphu.