# Before The Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge, Cachar, Silchar.

# Spl(POCSO) Case No. 16 / 2019 u/s 363 IPC r/w sec.8 of the POCSO Act The State of Assam

-Versus-

#### **Dilwar Hussain Mazumder**

..... accused person

Dates of evidence : 26.11.19

Date of argument: 26.11.19

Date of judgment : 26.11.19

#### **Appearance:-**

For the Prosecution: Miss. B. Acharjee, Id. .Spl.P.P.

For the Defence: Mr. M.H.Mazumder, Ld. advocate

#### J U D G M E N T

1. The brief facts of the prosecution case is that the informant namely, Makhanlal Das had lodged an ejahar dated

- 21.12.18 stating inter alia, that on 20.12.18 at about 5 pm the accused kidnapped the minor daughter of the informant with his Nano Car bearing registration No.ML 04 B 7699. It is also stated that the accused also molest the daughter of the informant and hence the case.
- 2. Accordingly, on receipt of the ejehar, police registered a case being Kachudram P.S Case No.123/18 u/s 366 of the IPC r/w sec.8 of the POCSO Act. Thereafter, on completion of investigation police submitted a charge sheet against the present accused person u/s 363 of the IPC r/w sec.8 of the POCSO Act and sent up the accused person to face trial.
- 3. The Ld. CJM., Cachar, Silchar committed the case to the to this court . Thereafter, on 15.6.19 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Dilwar Hussain Mazumder has appeared before this court and on 9.9.19 after hearing the prosecution and the defence counsel, this court was pleased to frame charges u/s 363 of the IPC r/w sec. 8 of the POCSO Act against the accused person and its particular was read over and explained to him to which the accused pleaded not quilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced, during which the prosecution examined the informant and the victim as the P.W.1 and the P.W.2 respectively. The Ld. Spl.P.P has submitted that as the P.W.1 & the P.W.2 have failed to implicate the accused person with the alleged

offence, the prosecution evidence may be closed. As there was no incriminating materials has come out against the accused person in the evidence of P.W.1 & 2, the statement of the accused person u/s 313 of the Cr.P.C is dispensed with.

5. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

## 6. **Point for determination:-**

- (i)Whether on or about the 20.12.18 at about 5 pm at Mohankal under Kachudaram P.S the accused person kidnapped the victim, i.e. the minor daughter of the informant while she boarded in the vehicle of the accused from Amraghat from the lawful guardianship of her father for going to her own house, as alleged?
- (ii)Whether on the same date, time and place the accused person committed sexual assault upon the victim, as alleged?

#### **Discussion , Decision and Reasons Thereof :-**

- 7. In this case the prosecution side examined as many as 7(seven) witnesses to prove the case.
- 8. The P.W.1 Makhanlal Das, the informant of the case . In his evidence he stated that the occurrence took place about a year ago and on that day he went to Amraghat Bazaar with his daughter i.e. the victim. He also stated that as it was raining so he sent his daughter with the accused in his nano car with a request to drop his daughter in front of his house. The P.W.1 also stated that thereafter he came to

his house and did not find his daughter at home and then they made hue and cry public also gathered in front of his house on the road and after sometime, the accused came with his daughter in the vehicle. The P.W.1 also stated that public stopped the vehicle and damaged the vehicle and the accused also fled away. The P.W.1 also stated that his daughter came down of the vehicle and later on he came to know that the accused took her to Khasiapunji to drop other passengers and thereafter he brought his daughter to his house. The P.W.1 also added that somebody informed police and police came, took him and his daughter to the police station wherein he lodged the FIR, which is brought on record as the Ext.2. The P.W.1 also stated that at the time of occurrence the age of his daughter was 11 years.

During cross-examination the P.W.1 stated that the accused took the passengers of Khasiapunji and first dropped them there and then brought his daughter to his house and on his return he did not find his daughter in his house and as such they made hue and cry.

9. The P.W.2, the victim of the case and she testified that about a year ago, her father put her in a nano vehicle of the accused at Amraghat Bazaar to drop her at her home at Mohankhal and thereafter the accused had not stopped the vehicle near her house and after dropping other passengers brought her near her home and dropped her there. The P.W.2 further stated that she narrated the whole incident to

her father and her father lodged the instant FIR. She also stated that police sent her for her medical examination and also produce her to court wherein her statement u/s 164 of the Cr.P.C was recorded. The said statement u/s 164 of the Cr.P.C is brought on record as the Ext.1. The P.W.2 further stated that at the time of occurrence she was a student of class V.

During her cross-examination the P.W.2 admitted that while she was coming in the nano vehicle of the accused there were other Khasi passengers in the said vehicle. She also admitted that there is a point from which her house goes on the right side of the road and on the left side it is Khasiapunji and on that point, the khasia people told the accused they should be first dropped and then the accused took the vehicle towards Khasipunji and dropped them and thereafter brought her to her house. She also admitted that as her father came to his house and did not find her and when the accused dropped her there were many other people also gathered and damaged the vehicle and on the basis of the version of the public her father lodged the FIR. 10. Appreciating the materials on record, it is found that though the informant P.W.1 alleged that the accused had kidnapped his daughter but during his deposition before the court had failed to support the said version. In his evidence

the P.W.1 stated that as it was raining so he sent his

daughter with the accused in his nano car with a request to

drop his daughter in front of his house. The P.W.1 also stated that thereafter he came to his house and did not find his daughter at home and then they made hue and cry public also gathered in front of his house on the road and after sometime, the accused came with his daughter in the vehicle. The P.W.2 also supported the said version of the P.W.1. Thus, from the above evidence it is crystal clear that the accused had no intention of kidnapping the victim. Thus, the prosecution has failed to prove the ingredients of sec.363 of the IPC against the accused person.

- 11. On the other hand, the evidence of both the informant and victim is totally silent as regard commission of sexual assault upon the victim. Nowhere, in the evidence, the victim as well as the informant had stated that the accused committed sexual assault upon the victim. Thus, the prosecution side also failed to prove the said offence of sexual assault upon the victim. That apart, neither the victim nor the informant have implicated the accused person in respect of the offences charged against the accused person i.e. the offence u/s 363 of the IPC r/w sec. 8 of the POCSO Act.
- 12. It is the bounden duty of the prosecution to prove the necessary ingredients of the offence against the accused person beyond all reasonable doubt .
- 13. Upon consideration of all the oral and documentary evidence on record as discussed above, I have found that the

prosecution has miserably failed to prove the charges against the accused person beyond all reasonable doubt.

### ORDER

14. Considering the materials available on record, I found that the prosecution has failed to prove the alleged offence u/s 363 of the IPC r/w sec.8 of the POCSO Act against the accused person present today beyond reasonable doubt. As a result the accused person namely, Dilwar Hussain Mazumder is acquitted and set at liberty.

Set my hand and seal of this case on the 26<sup>th</sup> day of November, 2019.

(Mr.D.Ullah),

Sessions Judge, Cachar, Silchar.

Dictated & corrected by me;

Sessions Judge, Cachar, Silchar.

Transcribed by -

S.A.Laskar, Stenographer.