# 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. 04/2018 corresponding to GR Case No. 154/2018 & Bokajan Police Station Case No. 34/2018 Under Sections 363/376 IPC/ R/W 4 of the

POCSO Act.

State of Assam

Versus

Shri Joydeep Sorin @ Biswajit Sorin

## Name of informant/complainant:

Shri Nabin Chandra Gogoi S/O Late Lohang Gogoi

Village: Langboi, Balipathar

PS: Bokajan

District: Karbi Anglong, Assam

## Name of the accused person facing trial:

Shri Joydeep Sorin @ Biswajit Sorin

S/O Shri Ismail Sorin

Village: Japrajan, Kacharigaon

P.S: Bokajan

District: Karbi Anglong, Assam.

## Advocates appeared:

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

For the defence : Mr. Bidhan Mazumder

Date fixed for Argument : 03.06.2019

Judgment pronounced & delivered on: 07.06.2019/10.06.2019

N.B:- On date fixed Judgment could not be pronounced due to absence of defence counsel.

### **JUDGMENT**

- 1. It is a case of Kidnapping of a minor girl and penetrative sexual assault on her alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 17.02.2018 the informant named above lodged a written ejahar with Bokajan Police Station stating inter alia that on 14.02.2018 at about 3:00 PM the victim went untraced leaving a letter in her reading table wherein she stated that she would not marry anyone other than the accused Joydeep from Japrajan. On receipt of written ejahar, Bokajan Police Station registered a criminal case under section 363 IPC and started investigation. On completion of investigation, the charge sheet was submitted under sections 363/376 IPC read with section 4 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the present accused person before the Court, copy was supplied to the accused person. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary I found that there was ground for presuming that that the accused person committed the offenses under sections 363 of the IPC/4 of the POCSO Act and accordingly, the charges were framed. The particular of the offence charged was duly read over and explained to the

accused person to which he pleaded not guilty and claimed to be tried.

4. During trial, Prosecution has examined as many as 7 (Seven) witnesses. The accused person was examined under section 313 CrPC. Defence has examined none. Plea of defence is of total denial.

## 5. **Points for determination**

- (i) Whether the present accused person on 14.02.2018 at about 03:00 PM at Langboi, Balipathar under Bokajan Police Station kidnapped victim from the possession of the informant who was legal guardian?
  - (ii) Whether the accused on or after 14.02.2018 at Langboi, Balipathar under Bokajan Police Station or in any other Police Station made penetrative sexual assault upon the victim?

#### **Decisions and reasons thereof:**

- 6. I have very carefully gone through verbal arguments advanced by the learned counsels of both sides as well as evidence on record.
- 7. PW-1 is informant of this case who has stated in his evidence that the occurrence took place on the day of Shivratri in the year 2018. On the day of the occurrence for occasion of Shivratri he went to the

house of his friend and other members of his family went to the place where Shiv Puja was being celebrated. Thereafter on the day of occurrence in the evening he came home back and finding the victim not available in the house he started searched the places situated nearby the PO. After few minutes from his arrival at the house his wife also came home back. Thereafter in the reading table of the victim a piece of paper was found wherein it was mentioned that she got married with the accused. After 3 (three) days from the date of occurrence, he informed the matter to the Police of the Bokajan Police Station. While he was in the Police Station his niece Bhonti Gogoi informed him over telephone that she saw the victim and accused together at Shariojan Tiniali. Thereafter Police came to the Shariojan along with him in Police van and found them there. Thereafter both victim and accused were taken to the Police Station. Ext-1 is the ejahar and Ext-1(1) is his signature. At the time of occurrence the victim was above 16 years. On the following day the victim was taken to the Diphu Hospital for medical examination. The Police also recorded the statement of the victim in the Court and seized Admit card vide Ext-2 and Ext-2(1) is his signature.

8. PW-2 is Smti. Nirala Gogoi who is the mother of the victim. The occurrence took place on the day of the Shivratri. At the time of occurrence she along with sister of the victim went out for celebrating Shivratri puja outside leaving the victim alone in the house. She came home back at about 5:00 PM and started searching the victim while she was found

not available in the house. During searched she found a piece of paper wherein victim wrote that she was got married with the accused. After 3(Three) days from the occurrence while father of the victim could not traced out her where about he lodged a written ejahar. During presence of informant in the Police Station the daughter-in-law of the nephew of the informant informed over telephone that the victim was being kept in Shariojan. Thereafter Police along with informant came Shariojan and found the accused and the victim together. Thereafter Police took both accused and victim to Police Station. On being asked the victim informed her that at Shariojan she along with the accused was staying in the house of his elder sister. At the time of occurrence she was 17 years old. Police got her medically examined and her statement recorded in the Court.

9. PW-3 is Miss Lukumoni Gogoi who is the victim of this case. She has stated in her deposition that on the day of Shivratri at 1:00 PM the occurrence took place. At that time the accused came to their house while there was none in the house as they went out for celebrating Puja and asked her to flee away with him. Though the victim refused to flee away with the accused as there was an examination but on threat she came out with the accused. The accused took her to the house of his elder sister where they stayed for 3 (three) days. During the stay the accused made sexual intercourse with her twice. On 3<sup>rd</sup> day while the accused was taking her to Mandir at Shariojan Tiniali her sister-in-law met them. Talk between her and her sister-in-law took place. She informed her father over telephone that she was with the accused at Shariojan. Police came to Shariojan and picked up both of them. Police took them to Police Station. Police got her medically examined and her statement recorded in the Court. Ext-3 is her statement. Ext-3(1) and Ext-3(2) are her signatures.

- 10. PW-4 is Shri Nilakanta Gogoi @ Nila who has stated in his deposition that he heard from the villagers that someone kidnapped the victim.
- 11. PW-5 is Shri Khargeswar Gogoi who has stated that the occurrence took place on the day of Shivratri. After 2/3 days from the occurrence while he came home back he heard from the villagers that the accused kidnapped the victim. At the time of occurrence the victim was reading in class IX or class X. After three days of the occurrence the victim was recovered.
- 12. PW-6 is Medical Officer who stated that on 19.02.2018 she was attached to Diphu Civil Hospital as SD and HO and on that day she examined the victim in connection with Bokajan Police Station Case No. 34/2018 under section 363 IPC and found that victim was below 16 years between 14-15 years as per radiologist opinion, that no external injury was seen and that hymen was absent. Ext-3A is the Medical examination report and. Ext-3A(1) and Ext-3A(2) are her signatures.

- in her deposition that the occurrence took place in the year 2018. On the day of occurrence there was a Shivratri. On the following day she came to know the victim became untraced from the house. After 3/4 days while she was standing nearby the road she saw the victim girl in an auto rickshaw. On being asked the victim informed her that she was staying with a boy. She informed the matter to her husband. After few minutes her husband with Police came there and the Police managed to apprehend the accused. Thereafter Police took the accused and the victim to Police Station.
- 14. For attracting section 363 of the IPC and section 4 of the POCSO Act the victim must be a child as defined under section 2(d) of the POCSO Act. As per section 2(d) of the POCSO Act a person who is below 18 years is called child. No Birth certificate of the victim was recovered. Even though no school certificate showing date of birth of the victim was submitted. Now the Court is to hold age of the victim at the time of occurrence on the basis of oral evidence and Medical report. Ext-3A is the Medical report which shows that Ossification test was conducted to ascertained age of the victim and after Ossification test impression was drawn that at the time of occurrence the victim as below 16 years(14/15 years). Ext-2 is the seizure list by which HSLC Admit card of the victim was seized. Seized Admit card shows that Date of Birth of the victim is 01.01.2001. Occurrence took place on 14.02.2018. From the Admit card it appears that on the day of occurrence the victim was 17 years 1 month 13

days. PW-1 and PW-2 are the parents of the victim. Evidence of PW-1 shows that at the time of occurrence victim was above 16 years but below 17 years. On the other hand PW-2 who is the mother of the victim has stated that at the time of occurrence the victim was 17 years. According to the victim at the time of occurrence she was 16 years. As per Medical report she was below 16 years between 14/15 years. After application of margin of error in ascertained age of the victim on the basis of Ossification test it can be held that at the time of occurrence she was below 18 years. The accused though in his statement recorded under section 313 CrPC stated denial of his involvement in alleged occurrence but evidence that at the time of occurrence victim was below 18 years remained uncontroverted. Hence, in view of the discussion made above I have come to conclusion that at the time of occurrence the victim was a child.

15. PW-3 who is the victim of this case has vividly narrated as to how the accused took her from her house on the day of occurrence. Her evidence clearly shows that on the day of occurrence while she was alone in the house the accused took away her to the house of his elder sister situated at Shariojan and kept her there for 3 (Three) days wherein he made sexual intercourse with her for twice. Her evidence also reveals that on the basis of telephone call given by her sister-in-law Police came at Shariojan where from Police took all of them to the Police Station. From the cross examination of PW-3 defence case is reveal that while the victim was reading in class X, a love affairs was developed

between her and the accused and that the accused made sexual intercourse with her on her sweet will. Ext-3 is the statement of the victim recorded under section 164 CrPC which shows that a sort of weak love affairs was developed between the accused and the victim and the accused took away from her paternal house on threat that if she refused to flee with him he would commit suicide. It also shows that the victim was kept in the house of elder sister of the accused situated at Shariojan wherein he made sexual intercourse with her forcibly. Ext-3A is the Medical Report which shows that during Medical examination of the victim her hymen was not found. That apart, history of alleged occurrence narrated in Ext-3A shows that a love affairs was developed between the accused and the victim, that the accused took her on the day of occurrence to his house wherein he made sexual intercourse with her. The absence of hymen of the victim indicates that she was subjected to sexual intercourse. Now it is found that there is corroborative Medical evidence for the evidence of the victim that the accused made a sexual intercourse with her. During cross examination of the victim the defence did not take any pain to dispute that the accused kept the victim in his house and made sexual intercourse with her.

16. From the statement of the victim itself it appears that she did not strongly object to flee away with the accused person on his request. Her evidence also silent that she did not raise any objection while the accused was making sexual intercourse with her. It is established principle that minor consent is no consent. Both PW-1, 2 and 4 categorically have stated that after 3 days from the date of occurrence the victim was recovered from the possession of the accused in Shariojan Tiniali.

17. In view of the discussion made above and the presumptions laid down under section 29 of the POCSO Act I have come to conclusion that the prosecution has succeeded in establishing its case under section 363 IPC/4 of the POCSO Act.

## **ORDER**

- 18. In the result, I find the accused Sri Joydeep Sorin guilty under section 363 IPC/4 of the POCSO Act and accordingly he is convicted.
- 19. On the point of sentence, the accused person is heard and to that effect his statement is recorded. The learned lawyer appearing on behalf of the accused person has submitted that the accused is the only earning member of his family consisting of his wife and 3 children and as such he deserved to be punished leniently. On the other hand the learned Public Prosecutor has submitted that the accused made flood with the victim though he is a married person having 3 children and as such he needs to be punished exemplary. Taking all aspects into consideration, I do hereby order the accused Sri Joydeep Sorin @ Biswajit Sorin to undergo RI of 6 (Six) months for the section 363 of the IPC and RI of 7 (Seven) years and to pay a fine of Rs. 1000/- i/d SI

for 1 (One) month for the section 4 of the POCSO Act. Both sentences will run concurrently. Set off earlier detention period. Return the seized document to the informant in due course of Law. Let certified copy of the Judgment be supplied to the accused person at free of cost. Send also a copy of the Judgment to the Leaned District Magistrate in term of the section 365 of the CrPC. No order in the light of section 357 A of the IPC is passed.

- 20. Accordingly this case is disposed of on contest.
- 21. Given under my hand and seal of the Court on this 10<sup>th</sup> June, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

(Md. A.U.Ahmed, AJS)
AJS)
Special Judge
Diphu, Karbi Anglong, Assam
Anglong,

(Md. A.U.Ahmed,

Special Judge Diphu, Karbi

## **APPENDIX**

## **Prosecution Witnesses:**

PW1- Shri Nabin Chandra Gogoi

PW2- Smti Nirala Gogoi

PW3- Miss Lukumoni Gogoi

PW4- Shri Nilakanta Gogoi @ Nila

PW5- Shri Khargeswar Gogoi

PW6- Smti Jacqueline Teronpi

PW7- Smti Bonti Tissopi Gogoi

## **Defence Witnesses: Nil**

## **Prosecution Exhibited:**

Ext.1- Ejahar

Ext.2- Seizure List

Ext.3- Statement of the Victim

Ext.3A- Medical Report

**Defence Exhibited: Nil** 

Special Judge Diphu, Karbi Anglong, Assam