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. 11/2017 (Special)/

Sessions Case No. 91/2017 corresponding to GR Case No. 785/2017 & Diphu Police Station Case

No. 159/2017

Under sections 366 A of IPC and 4 of the

POCSO Act

State of Assam

Versus

Shri Jirsong Enghi

Name of informant/complainant:

Shri Rupsing Timung

S/O Late Longsing Timung

Village: Rongmili Forest Colony

PS: Diphu

District-Karbi Anglong

Name of the accused person facing trial:

Shri Jirsong Enghi

S/O Shri Dhansing Enghi

Village: Toukhadi No.1 Enghi Gaon

PS: Kheroni

District-West Karbi Anglong

Advocates appeared:

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

For the defense : Mr J. Paul.

Argument heard on : 07.08.2019.

Judgment pronounced & delivered on: 26.08.2019

JUDGMENT

- 1. It is a case of penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 08.10.2017, the informant-Shri Rupsing Timung lodged a written ejahar at Diphu Police Station stating inter alia that on the same day at about 8:30 AM, his victim daughter went to Diphu Govt. College and since then she had been missing. He suspected that the accused above-named had kidnapped his victim daughter. On receipt of the written ejahar, O/C, Diphu Police Station registered a case vide Police Station Case No. 159 of 2017 under section 366-A of IPC. On completion of investigation, I.O. submitted the charge-sheet under sections 366-A of IPC and 4 of the POCSO Act against the accused Shri Jirsong Enghi. Hence the prosecution has come up.
- 3. On submission of charge sheet under sections 366A of the IPC and 4 of the POCSO Act, it was re-numbered. Having very carefully gone through the submissions duly advanced by the learned lawyers of both sides as well as case diary I found ground for presuming that the accused person committed the offences under sections 363 of the IPC/4 of the POCSO Act and accordingly the charges were framed. The particular of the charged offense was duly read over and explained to the accused person to which he pleaded not quilty and claimed to be tried.
- During trial, Prosecution side has examined as many as
 (eight) witnesses including the complainant and the alleged victim. Statement of the accused was recorded under

section 313 of CrPC. Defence declined to adduce evidence. Plea of defence is of total denial.

5. **Points for determination are:**

- i. Whether the accused person on 01.08.2017 kidnapped the victim from her lawful guardian at Village Rongmili Forest Colony under Diphu Police Station?
- ii. Whether the accused person on or after 01.08.2017 committed penetrative sexual assault upon the victim who was the daughter of the informant, Shri Rupsing Timung at Whether the accused person on 01.08.2017 kidnapped the victim from her lawful guardian at Village Rongmili Forest Colony or at any other place?

6. **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.

7. PW-1 is Smti. Kabita Timungpi who deposed in her testimony that the informant is her father and the victim is

her sister. The occurrence took place on 05.10.2017. On the day of occurrence, her victim-sister came out of their house, but she did not return on that day. After two days of the occurrence, the victim over telephone informed her father that she was in Daikhali village under Kheroni Police Station in the house of Jirsong Enghi and on that day itself, she and her father went to the house of Jirsong Enghi. Getting the information of their movement towards the house of the accused, the family members of the accused kept him and her sister hidden in unknown place. While they reached the house of the accused, his family members drove them away and they were reluctant to talk with them regarding the victim. Thereafter, they came back to Diphu and her father lodged the ejahar at Diphu PS. After one day of the occurrence, police recovered the victim girl from the clutches of the accused person, Jirsong Enghi and the police took both of them to Diphu Police Station.

8. PW-2 is Shri Rupsing Timung who told that he is the informant of this case. The victim is his daughter who was 17 years old at the time of occurrence. On 05.10.2017 at about 3:00 PM the victim came of the house for the purpose of playing at the field of Govt. Boys High School, but on that day, she did not come home back. They made search to trace her whereabouts. On 07.10.2017 the mother of the accused Jirsong Enghi informed her over telephone that the victim was in their house situated at Dokhadi under Kheroni Police Station. On that day, he along with his daughter and wife went to the house of the accused person. Getting the information of their arrival, the victim was taken from the house of the accused to an unknown place. Thereafter, the family members of the accused person drove them away from their house. Then he lodged the ejahar at Diphu Police Station. On the following day of filing of the FIR, police went to the house of the accused along with him and recovered the victim from his house. The police took both the accused and the victim to Diphu Police Station. Police got the victim medically examined and got her statement recorded in the Court. The Court handed her over to him. Ext.1 is his ejahar and Ext.1(1) is his signature.

- 9. PW-3 is the victim who has stated that the informant is her father and she knows the accused person. The occurrence took place in the year 2017. At the time of occurrence, she was 17 years old. One night she called the accused to come to their house and thereafter while the accused came, she fled away with him and took shelter in the house of the accused situated at Tokhati under Kheroni Police Station. Before fleeing away with the accused person, she met him on the date of occurrence at 4:00 PM in the playground of Diphu Govt. Boys High School. Her sister found her and the accused person sitting together in the said field. She was at the house of the accused person for five days as husband and wife. During her stay there, the accused made sexual intercourse with her. The police recovered her from the house of the accused and took both them to Diphu Police Station. Police got her medically examined and her statement recorded in the Court. Ext.2 is her statement and Ext.2(1) is her signature. The Court handed her over to her parents.
- 10. PW-4 is Shri Jitu Hazarika who has deposed in his evidence that the informant is his father-in-law. The victim is the daughter of the informant. He knows the accused person. The occurrence took place in the year 2017. At the time of occurrence, the victim was 16 years old and at that

time, he was at Guwahati. On the day of occurrence, his wife informed him over telephone that the accused took away the victim. After one day of the occurrence, the victim was recovered. After recovery of the victim, he went to Diphu Police Station where the victim was kept. At that time, he saw the accused in the police station.

- 11. PW-5 is Shri Dilip Terang who has deposed in his deposition that the informant is his father-in-law. The victim is the daughter of the informant. He knows the accused person. The occurrence took place in the year 2017. After two days of the occurrence, father-in-law and mother-in-law informed him that their daughter was in their house. After two days of the occurrence, the victim was recovered with the accused, Jirsong Enghi. After recovery of the victim, he went to Diphu Police Station and saw the victim and the accused person there. At the time of occurrence, the victim was 16 years old.
- 12. PW-6 is Dr Mercy Rongpharpi stated that on 10.10.2017 while she was serving at Diphu Civil Hospital as Medical & Health Officer, she examined victim in connection with Diphu PS Case No.159/2017 and found the following:-Hymen was absent and vagina admits two fingers. Posterior fourchette was found congested. Posterior vaginal swab was taken. Spermatozoa were detected. X-ray was done for age determination. The age of the girl was below 18 years, between 16-17 years. There was no visible external injury. Ext.2 is the medical report and Ext.2(1) is her signature.
- 13. PW-7 is Smti. Ganga Hansepi who has deposed in her testimony that the informant is her husband. The victim is her daughter. The occurrence took place in the last Lakshi

Puja. On the day of occurrence at about 4:00 PM, her daughter came to Diphu Govt. Boys School for the purpose of participating in Kung fu training program, but she did not come home back. She searched her daughter in various places including the houses of her friends, but did not find her. After two days of missing of her daughter, the mother of the accused informed her that her daughter was in their house. After receiving the call from the mother of the accused, she along with her husband, two other daughters and their husbands went to the house of the accused situated at Tokhadi under Kheroni Police Station. At the time of their arrival at the house of the accused, her daughter and the accused were present there, but after a while they fled away and therefore, they could not bring her back. On the next day of the occurrence, police came to the house of the accused and brought the accused and the victim to Diphu Police Station. At the time of occurrence, the victim was 16-17 years old. Police brought the victim to the hospital for her medical examination and got her statement recorded in the Court.

14. PW-8 is Shri Bichitra Hajong who has stated in his evidence that on 08.10.2017 while he was working at Diphu Police Station, the O/C of the PS received an ejahar from the informant, Shri Rupsing Timung to the effect that his daughter at about 8:00 AM went to College and till then she did not come home back. The complainant suspected that the accused, Jirsong Enghi kidnapped his daughter. After registration of the case, the O/C of their PS directed him to investigate the case. He recorded the statement of the informant in the police station, prepared a sketch map and then went to the place of occurrence. He recorded the statements of the witnesses at the place of occurrence. As

the house of the accused is situated at Kheroni, he kept close contact with the O/C of Kheroni PS. On the night of 9th October, Kheroni PS informed him that the accused was staying at his house and accordingly, on 10th October, he and his staffs proceeded to Kheroni. In the meantime, Police of Kheroni PS brought the victim and the accused to their PS. Thereafter, he took both the victim and the accused to Diphu Police Station. He sent the victim to hospital for medical examination and then he got the statement of the victim recorded in the Court. He interrogated the accused and after his examination, he produced the accused before the Court. He seized the birth certificate of the victim in presence of the witnesses. He collected the medical report of the victim and the statement of the victim. After perusal of the birth certificate of the victim, he prayed before the Court to add the section 4 of the POCSO Act against the accused person. As he found sufficient materials under sections 366-A of IPC and 4 of the POCSO Act, he submitted the charge-sheet under the said sections against the accused person. Ext.1 is ejahar, Ext.3 is sketch map, Ext.4 is seizure list, Ext.5 is prayer made before the Court for adding Sec.4 of the POCSO Act and Ext.6 is charge-sheet. Ext.3(1), Ext.4(1), Ext.5(1) and Ext.6(1) are his signatures.

15. PW-1 is the brother of the victim. His evidence shows that at the time of occurrence the victim was 16 years old. According to PW-2 who is the father of the victim and PW-3 is the victim at the time of occurrence she was 17 years old. PW-6 is the medical officer. On medical examination of the victim on 10.10.2017 she found her (victim) age to be below 18 years between 16/17 years. PW-8 is the investigating officer who has stated in his evidence that he seized one

original birth certificate of the victim vide Ext-4 which shows that at the time of occurrence the victim was 17 years 6 months 27 days. The victim herself has not disputed contents the seized birth certificate admitting in her cross-examination that in fact she was 18 years at the time of occurrence. There is no guarantee that actual date of birth is recorded in the birth certificate. It is evident that at the time of occurrence she was a student of class XI (Eleven). Taking medical evidence and cross-examination of the victim into consideration I there is doubt that at the time of occurrence victim was below 18 years. For attracting section 4 of the POCSO Act, the victim at the time of occurrence must be a child. According to section 2(d) of the POCSO Act a person is a child who has not completed 18 years.

16. In such a case, the victim is considered to be most vital witness. Her evidence shows that she fled away with the accused person on her sweet will. It is also evident that the accused made sexual intercourse with her on his consent and will.

ORDER

17. In the result, I find that the prosecution has failed to prove its case against the accused person Shri Jirsong Enghi beyond all reasonable doubts. Hence on benefit of doubts the accused person Shri Jirsong Enghi is hereby acquitted from the charges brought against him and let him set at liberty forthwith. Let the seized Birth certificate be returned to the informant or to the victim in due course of Law. The Superintendent of the District Jail, Karbi Anglong, Diphu is asked to release the accused person if he is not wanted in any other case.

- 18. Accordingly this case is disposed of on contest.
- 19. Given under hand and seal of this court today, the 26th day of August, 2019 at Diphu, Karbi Anglong.

Dictated and corrected by me.

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

APPENDIX

Prosecution Witnesses:

- PW1- Smti Kabita Timungpi
- PW2- Shri Rupsing Timung
- PW3- Victim
- PW4- Shri Jitu Hazarika
- PW5- Shri Dilip Terang
- PW6- Dr Mercy Rongpharpi
- PW7- Smti Ganga Hansepi
- PW8- Shri Bichitra Hazong

Defence Witnesses: Nil

Prosecution Exhibited:

- Ext.1- Ejahar
- Ext.2- Medical Report
- Ext.3- Sketch Map of the PO
- Ext.4- Seizure List
- Ext.5- Prayer for adding Section 4 of the POCSO Act
- Ext.6- Charge Sheet

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam