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

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special 18/2018 corresponding to GR Case No.849/2018 & Borpathar Police Station Case No. 50 Under Section

363 of IPC and 4 of the POCSO Act.

State of Assam

Versus

Shri Ajay Munda, Accused person

Name of informant/complainant: Smti Gangi Orang

Name of the accused person facing trial: Shri Ajay Munda

S/O Shri Sarua Munda alias Rowa Munda

Vill: Deopani Monkey Basti

P.S: Borpathar

District: Karbi Anglong.

#### Advocates appeared:

For the prosecution : Mr D. Deka, Public Prosecutor For the accused : Mr Jitu Paul, Legal Aid Counsel

Argument heard on : 04.12.2018

Judgment pronounced & delivered on: 06.12.2018

#### **JUDGMENT**

- It is a case of kidnapping of minor and penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 13.08.2018 the informant, Smti Gangi Orang lodged an ejahar with Borpathar Police Station stating inter alia that on that day

at about 4:00 AM, her daughter- Smti Maina Orang aged about 12 years went to pluck tea leaves from Shubhenaswari Tea Estate. As she did not return till the evening, they searched her and could know that Shri Ajoy Munda resident of Deopani Bagan kidnapped her. On receipt of the written ejahar, O/C, Borpathar Police Station registered a criminal case vide Borpathar Police Station case No.50/2018 U/S 363 of IPC and he himself took the charge of investigation. On completion of the investigation, he submitted charge-sheet being the I.O. of the case U/S 363 of IPC R/W Sec. 4 of the POCSO Act against the accused person.

- 3. On completion of appearance of the accused person before this Court, copy was furnished to him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, this Court found sufficient grounds for presuming that the accused person had committed the offence U/S 363 of IPC and section 4 of the POCSO Act and accordingly, the charges were framed. The particulars of the charged offences were duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 4. During trial, Prosecution has examined as many as 4(Four) witnesses including the informant and the alleged victim. Accused person has been examined U/S 313 of Cr.P.C. Defense examined none. Plea of defence is of total denial.

## 5. **Points for determination are**

(i) Whether the accused person, Shri Ajay Munda on 13.08.2018 at about 4 AM at Shubhenaswari Tea Estate under Borpathar PS Kidnapped Smti Maina Orang aged

about 12 years out of keeping of the lawful guardianship without his consent and that he thereby committed an offense punishable U/S 363 of IPC?

(ii) Whether the accused person of the same date, time and place caused penetrative sexual assault to Smti Maina Orang aged 12 years and thereby committed an offense punishable U/S 4 of the POCSO Act?

### 6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

7. PW-1, Smti Gangi Orang deposed that she is the informant of this case. The victim is her daughter. She knows the accused person. The incident took place on a Sunday in the year 2018. On the day of occurrence, the victim went to the tea estate at 5:00 AM for plucking tea leaves. As she did not come back home at noon hours, they searched her here and there and from her friends they could know that the accused, Ajay Munda eloped her. She lodged an ejahar at Borpathar police station about the incident. The victim got missing since Sunday morning and on Monday she knew that the victim was staying in the house of the accused. Although, she tried to bring back the

victim from the house of the accused but she failed. Then she informed the police about the place of stay of the victim. On the day itself, police recovered the victim from the house of the accused and apprehended the accused. The police took them to the police station. The police took the victim to Diphu Civil Hospital for medical examination and got her statement recorded in the Court. At the time of occurrence, the victim was 13 years old.

- 8. PW-2, Smti Maina Orang deposed that the informant is her mother. She knows the accused person. About two months ago on a Sunday at 5:00 AM, she went to tea estate for plucking tea leaves. On that day at about 5:00 PM, the accused met her and proposed that he would marry her and take her to his house. She slept in that night with the sister of the accused. On the subsequent day in evening hours, her mother took her back from the house of the accused and then instituted the case. The police caused her medically examined and her statement recorded in the Court. At present, she is living with her mother.
- 9. PW-3, Miss Priti Kheria deposed that she knows the informant, the accused and the alleged victim. The incident occurred in one year ago. As per her information, there was a love affair between the victim and the accused person and on the day of occurrence, the victim eloped with the accused person. After a few days, she heard that the accused and the victim were apprehended by police. She and the victim belong to same age and both of them grew up together.
- PW-4, Dr. Atreyee Goswami deposed that on 14.08.2018 she was working at Diphu Civil Hospital as Senior Medical and Health Officer. On that day, she

examined Smti Maina Orang in connection with Borpathar PS case No. 50/2018 and found no injury in her body. She also found hymen absent and vagina admits one finger. She also deposed that according to the pathologist, spermatozoa was not detected on the slide. Pregnancy test was found to be negative and ultra sonographic test did not suggest any abnormality. According to the radiologist report, age of the victim was below 16 years i.e 14-15 years. Ext. 1 is the medical report. Ext.1 (1) and Ext.1(2) are her signature.

- Let us at first see whether the victim is child in term of 11. the section 2(d) of the POCSO Act and minor. According to the aforesaid section any person below the age of 18 years is child. PW-1 is the mother of the victim who is considered to be best person who can say when the victim born. She has stated that at the time of the occurrence the victim was 13 years old. The evidence of the victim also shows that at the time of occurrence, she was 13 years. PW-4 is medical officer who examined the victim. Her evidence shows that at the time of occurrence the victim was below 16 years i.e. 14-15 years. The defence has not disputed the evidence of PW-1 and PW-2 that at the time of occurred, the victim was 13 years. Basing on evidence of PW-4 I have come to conclusion that at the time of occurrence the victim was below 16 years. Hence it can be said that at the time of occurrence the accused was child in term of the section 2(d) of the POCSO Act and minor girl.
- 12. In this case the victim is the star witness. Her evidence shows that the accused to her to their house where she was spent one night and that she slept there with the sister of the accused. The defence has not disputed the evidence of the victim that the accused took her to their house

where she spent one night. There is no evidence that the accused took away the victim without consent of her parents. PW-1 who is the mother of the victim has clearly stated that the victim was taken away without her consent.

- 13. The evidence of victim is silent that the accused made penetrative sexual assault on her. Even though, the evidence of the medical officer shows that there was no evidence of recent intercourse. But it shows that hymen was absent. The victim stated in her statement recorded under section 164 of the CrPC that she had love affair with the accused which was started 6 months prior to the occurrence and once the accused made sexual intercourse with her. Considering all aspects I there is doubt that the accused made sexual intercourse with the victim.
- 14. Now I have come to conclusion that the prosecution has succeeded to establish its case under section 363 of the IPC against the accused person.

#### <u>Order</u>

- 15. In the result, I find that the accused guilty under section 363 IPC and accordingly he is convicted.
- 16. On the point of sentence the accused person is heard and to that effect his statement is recorded.
- 17. From the statement it appears that accused is just grown young man. There is no evidence on record showing that the accused person was earlier convicted by the Court of Law. It has been submitted by Ld. Defence counsel that the accused is entitled to get leniency in sentencing him. Taking all aspects into consideration I do hereby leniently ask the accused person to suffer SI for 6(six) months and

to pay fine of Rs. 500/- id SI for 15(fifteen) days. Set off earlier detention period. Let a certified copy of the Judgment be supply to the accused person at free of cost. Accordingly, this case is disposed of on contest.

18. Given under hand and seal of this court today, this the 06<sup>th</sup> day December, 2018.

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:

PW-1 Smti. Gangi Urang.

PW-2 Victim.

PW-3 Miss Priti Kheria.

PW-4 Dr. Arteyee Goswami.

Defence witnesses: Nil.

Prosecution exhibits:

Ext.1- Medical report.

Special Judge, Karbi Anglong, Diphu.