# 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. 14/2016** (Special) corresponding to GR Case No. 474/2016 &

Bakalia Police Station Case No. 43/2016

Under Sections 363 of IPC and 4 of the POCSO

Act.

State of Assam

Versus

Shri Biki Deb

## Name of informant/complainant:

Shri Binu Das

Son of Shri Umesh Das

Village: Natun Basti

PS: Bakalia

District: Karbi Anglong, Assam.

## Name of the accused person facing trial:

Shri Biki Dev

Son of Shri Bishnu Dev Railway Colony, Diphu

PS: Diphu

District: Karbi Anglong, Assam.

## **Advocates appeared:**

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

For the defence : Mr J. Paul
Argument heard on : 11.11.2019

Judgment pronounced & delivered on: 18.11.2019

#### <u>JUDGMENT</u>

- It is a case of kidnapping and penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 03.06.2016, the informant-Shri Binu Das lodged an ejahar with the O/C of Bakalia Police Station stating inter alia that on 02.06.2016 at about 9:00 AM his victim daughter aged 15 years was going to Kunjak Athai High School to appear 9<sup>th</sup> standard examination and she did not return home. When they started searching her, they could learn that on the instigation of one Subhas Das, Shri Biki Deb eloped the victim. On receipt of the ejahar, O/C Bakalia Police Station registered a case vide its Bakalia Police Station Case No. 43/2016 under sections 120 B/376 of IPC. On completion of investigation, I.O. submitted the charge-sheet under sections 366-A/376 of IPC and 4 of the POCSO Act.
- 3. On completion of appearance of the accused person, copy was furnished to him and this case was committed to the Court of the Sessions Judge, Karbi Anglong, Diphu as it was sessions triable. Thereafter, this case was transferred to this Court for disposal. On perusal of the case record along with case diary and after hearing learned lawyers of both sides, I found sufficient grounds for presuming that the accused person committed the offences under sections 363 of IPC and 4 of the POCSO Act. Accordingly, the charges were framed. The particular of the offences charged was duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution has examined as many as 10 (Ten) witnesses including the informant and the alleged victim. Statement of the accused person was recorded under section 313 of Cr.P.C. Defence has examined none. Plea of defence is of total denial.

### 5. **Points for determinations are:**

- (i) Whether the accused person on 02.6.2016 at about 10:30 AM at Kunjok Athoi under Bakalia Police Station kidnapped the victim aged about 15 years out of her lawful guardianship and that he thereby committed an offence punishable under section 363 of IPC?
- (ii) Whether the accused person on the same day and subsequent days at various places caused penetrative sexual assault to the victim aged about 15 years and thereby committed an offence punishable under section 4 of the POCSO Act?

#### 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 Shri Binu Das who has deposed that he is the informant of this case and he knows the accused person. The victim is his daughter. On the day of occurrence, he went outside for working. At about 1 PM a person told him that his daughter did not return home from school. Although he searched his daughter, but did not find her. Thereafter, a boy of their village informed him that a boy who was staying in the house of Subhas, a resident of their village, eloped his daughter. Later, he could know the name of the boy as Biki Dev. Then he lodged the ejahar at the police station. Ext.1 is the ejahar and Ext.1(1) is his signature. At the time of occurrence, the victim was about 15 years old. After three/four days of the occurrence, police informed them about the fact of recovery of the victim and called them to the police station. Accordingly, he went to the police station and he saw the victim and the accused there. On being asked by him, the victim did not say about the whereabouts of the accused.
- 8. PW-2 is the victim who has deposed that the informant is her father. She knows the accused person. The incident took place about three years back. At the time of occurrence, she was 16 years old. On the day of occurrence, she went to the school for appearing examination. When examination was over, she came out of the school and saw the accused waiting nearby the school with a vehicle. As the accused asked her to get into the vehicle, she got into it. After going some distance, the accused took her to the house of his friend. At that time, it was 3:00 PM. He kept her there in that night. During her stay there, the accused forcefully

made sexual intercourse with her. Thereafter, the accused took her to the house of his aunt (Pehi) and stayed one night there. On that night also, the accused made sexual intercourse with her. Then the accused took her to his own house and she stayed there for two days. During her stay in the house of the accused, he made sexual intercourse with her. The accused stayed in the house of one Subhas. He (Subhas) brought them to Bakalia Police Station. Police got her medically examined and her statement recorded in the Court. Ext.2 is her statement and Ext.2(1), 2(2) and 2(3) is her signatures.

- 9. PW-3 is Smti Rupali Das who has stated in evidence that she knows the accused person. The informant is her husband. At the time of occurrence, the age of the victim was 16 years. The occurrence took place three years ago. On the day of occurrence in the morning hours, she went out for doing wage work. The victim went to appear examination. At about 3:00 PM, she came back home and did not find her daughter and she started searching her. Thereafter, the friends of the victim informed her that the accused took the victim in a red vehicle. Getting this information, she informed her husband. The informant also went out for doing wage work. Although she searched her daughter in various places, she did not find her. After six days of the occurrence, police called them to the police station. Her informant-husband went to the police station. After returning from police station, her husband told her that the accused and the victim were in the police station. At the time of occurrence, the victim was 15 years six months old.
- 10. PW-4 is Shri Uttam Chandra Das who has deposed that he knows the informant and the victim. After apprehension

of the accused, he saw him (accused) at the police station. This incident took place three years ago. On the day of occurrence in the afternoon hours, the informant told him that his daughter went to school for appearing examination and did not return. He advised the informant to go to the police station. At the time of occurrence, he was VDP Secretary. The informant told him that the friends of the victim informed him (informant) that the accused took the victim in a red vehicle. Thereafter, the informant and he informed the matter at the police station. After six days of the occurrence, the police recovered the victim along with the accused and brought them to the police station and thereafter informed them. Getting the said information, he, the informant and many other people went to the police station. The police officer interrogated the victim in presence of him and the victim told that the accused forcibly took her in a car. When the police took the victim for medical examination and then to the Court, he also accompanied police.

11. PW-5 is Shri Tara Prasad Das who has stated in his evidence that he knows the informant, the victim and the accused. The incident took place in the year 2015/16. On the day of occurrence, he heard that a boy who was staying at the house of Subhas Das eloped the victim while she was going to the school. Later on, police came to their village and police asked him as to whether he knew the victim. In reply, he told that he had known the victim. He also heard that after six/seven days of the occurrence, the victim was recovered. At the time of occurrence, the victim was 14/15 years.

- 12. PW-6 is Shri Mantu Das who has stated that he knows the informant, the victim and the accused person. The occurrence took place about three years ago. On the day of occurrence, he heard that the daughter of the informant got missing. Police came to the village and asked him as to whether he knew the informant and the victim. In his reply, he told that he knew them. He heard that after 6/7 days of the occurrence, police recovered the victim. At the time of occurrence, the age of the victim girl was approximately 14, 15 or 16 years.
- 13. PW-7 is Smti Parvati Das who has deposed that she knows the informant, the victim and the accused person. The occurrence took place about three years back. Prior to the occurrence, the accused came to their house at the time of "Sharat" Puja. After the occurrence, she heard that one Biki Das who used to come to the house of the victim eloped her away. After seven days of the occurrence, she came to know that police recovered the victim.
- 14. PW-8 is Dr Kaban Teronpi who told that on 09.6.2016 when she was posted at Diphu Civil Hospital as SDM & HO,he examined Smti. Supriya Das in connection with Bakalia PS Case No.43 of 2016 and found the following: No external injury on her body, no injury in labia mojora, labia minora and fourchette. Hymen absence, vaginal suffix no hair. Dental examination reported as 7/7 7/7 and 7/7 7/7. On vaginal swab- spermatozoa not detected, radiological X-ray on wrist joint, R-2893 not fused, X-ray on elbow joint R2894 fused, X-ray on shoulder joint R2895 epiphysis of upper end of humereus fused and X-ray elliacrest R 2896 not fused. The age of the victim was below 18, between 16 to

17 years. Hymen not intact. Ext.3 is the medical report and Ext.3(1), 3(2) and 3(3) are her signatures.

- 15. PW-9 is Hirolal Das who stated that he knows the informant and the accused person, but does not know the victim. As he did not listen by his ear, he did not hear about the incident.
- 16. PW-10 is the investigating officer who has stated in his deposition that on 03.06.2016 he was working as officer-incharge at Bakalia Police Station. On that day one Binu Das came to the Police Station and lodged a written ejahar stating inter alia that on 02.06.2016 at 9:00 AM his victim daughter having age of 15 years went to Kunjak Athai High School for appearing examination but she did not come home back. During search it was learnt that the accused took away his victim daughter. On receipt of the written ejahar he registered a criminal case vide Bakalia Police Station Case No. 43/2016 under sections 120B/366A of the IPC against the accused person and took the case in his file. Ext.1 is the said ejahar. Thereafter he went to the place of occurrence and examined the witnesses found there and drew the sketch map of the PO. On 08.06.2016 he came to know that the accused took the victim to the house of his aunt situated at Sikari Pathar. On the way to Sikari Pathar he found the victim with the accused and thereafter he took both of them to the Police Station. He got the victim medically examined and her statement recorded in the court. On completion of the investigation he submitted the charge sheet under sections 366 A/376 of the IPC/4 of the POCSO Act. Ext.5 is the charge sheet.

- 17. For attracting sections 363 IPC and 4 of the POCSO Act, the victim needs to be below 18 years. The POCSO Act fully relates to the child which is defined under section 2(d) of the Act. A person who is below 18 years is called child. PW-1 and PW-3 are the parents of the victim marked as PW-2 who have categorically stated that at the time of occurrence, the victim was 15 years old. Evidence of PW-5 and PW-6 shows that at the time of occurrence, the victim was 14 to 16 years old. According to the victim, at the time of occurrence she was 16 years. Ext-3 is medical report of the victim which has been not challenged by the defence. According to Ext-3, on 09.06.2016 the victim was 16/17 years old. PW-10 is the investigating officer whose evidence is silent that he seized any age proof document. It is evident that the victim was school going child at the time of occurrence. Normally a school going child would not be more than 16 years. The parents are considered to be best person who can say real age of their child. There is nothing on record to show that as why they deposed false so far age of the victim is concerned. Taking all aspects I am convinced to hold that at the time of occurrence, the victim was below 18 years.
- 18. The investigating officer marked PW-10 has clearly stated in his evidence that while he was going to Sikari Pathar on the way he found the victim with the accused and there from he brought both of them to Police Station. The evidence of the victim also clearly shows that she along with the accused person was brought to Police Station by one Subhash while the accused took her to his house. The evidence of the victim is free from contradiction. The prosecution has not examined any person who saw the accused person taking the victim. From the evidence of the victim it is reflected that there was love affair between the

accused and the victim and that the accused took away the victim on her sweet will. Now I am convinced that it was the accused who took away the victim.

- 19. So far as penetrative sexual assault is concerned inflicted upon the victim, the evidence of the victim and medical evidence are very much vital. The penetrative sexual assault is normally done in lone place. From evidence of the victim shows that the accused first took her to the house of his friend wherein the accused made sexual intercourse with her. They stayed there for two days. There after she was taken to the house of his aunt where they halted one night. He also made sexual intercourse with her there also. There after again she was taken to his house where she stayed for two days and during her stay there he further made sexual intercourse. From her evidence it appears that the accused made sexual intercourse with the victim for 4/5 times. Ext-2 is the statement of the victim recorded under section 164 of the CrPC where she stated clearly that the accused took the victim to the house of his friend and thereafter to the house of his aunt and that the accused made sexual intercourse with the victim.
- 20. Ext-3 is the medical report. PW-8 is the medical officer who examined the victim. Ext-3 shows that on examination of the victim hymen was found absence and vagina capable of being admitting one finger. No bleeding and discharge was found. Basing of the evidence of the victim girl coupled with the medical evidence I have to come to conclusion that the victim was subjected to penetrative sexual assault.
- 21. There is a evidence on record showing that the victim was subjected to penetrative sexual assault for more than 1

(One) times. The section 5 of the POCSO Act relates to the aggravated sexual assault which is punishable under section 6 of the POCSO Act. Section 3 of the POCSO Act relates to penetrative sexual assault punishable under section 4 of the POCSO Act. The section 4 of the POCSO Act will serve the purpose so far as this case is concerned. Hence I would like to refrain from altering the sections already charged.

22. In commission of the offence under sections 363 of the IPC and 4 of the POCSO Act, consent of the victim is totally immaterial. The very purpose of the enactment of the POCSO Act is brought into force in order to protecting the child to be exploited from sexual assault and to keeping them in good health.

#### **ORDER**

- 23. In the result, I find the accused Sri Biki Dev guilty under sections 363 of the IPC/4 of the POCSO Act and accordingly he is convicted.
- 24. On the point of sentence, the accused person is heard and to that effect his statement is recorded. Heard the learned lawyers of the both sides. It has been submitted by the learned lawyer appearing on behalf of the accused person that accused is a poor person and only earning member of his family. He has further submitted that there is a no evidence on record showing that the accused was earlier convicted by the Court of Law. Accused is a just grown young person. Considering fact of the case I am of the opinion that the accused person deserves to be punish leniently. But the section 4 of the POCSO Act is very much harsh. Taking all aspects into consideration the accused Sri Biki Dev is hereby ordered to suffer rigorous imprisonment of

6 (Six) months and to pay a fine of Rs. 500/- i/d SI for 1 (One) months for the section 363 of the IPC and rigorous imprisonment of 7 (Seven) years and to pay a fine of Rs. 1000/- i/d SI for 2 (Two) months for the section 4 of the POCSO Act. Both sentences will run concurrently. Let certified copies of the Judgment and Order be supplied to the accused person at free of cost. Also send a copy of the Judgment to the District Magistrate, Diphu, Karbi Anglong in terms of the section 365 of the CrPC.

- 25. Accordingly this case is disposed on contest.
- 26. Given under hand and seal of this court today, the 18<sup>th</sup> day of November, 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- Sri Binu Das

PW2- Smti Supriya Das

PW3- Smti Rupali Das

PW4- Sri Uttam Chandra Das

PW5- Sri Tara Prasad Das

PW6- Sri Montu Das

PW7- Smti Pravoti Das

PW8- Dr. Kaban Teronpi

PW9- Sri Hirolal Das

PW10- Md. Abdul Zelil

#### **Defence Witnesses: Nil**

## **Prosecution Exhibited:**

Ext.1- Ejahar

Ext.2- Statement of the victim

Ext.3- Medical Report

Ext.4- Sketch Map of the PO

Ext.5- Charge sheet

**Defence Exhibited: Nil** 

Special Judge, Diphu, Karbi Anglong, Assam.