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

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

POCSO Case No. 10/2017 corresponding to GR Case No.640/2017 & Diphu Police

Station Case No. 124/2017

U/S 363 of the IPC/ 4 of the POCSO Act.

State of Assam

Versus

Shri Siman Singnar@ Suman Sahani

Name of informant/complainant:

Shri Prabin Pradhan

S/O Lt. Arjun Pradhan

Vill: PWD Colony, Diphu

PS: Diphu

Dist: Karbi Anglong, Assam.

Name of the accused person facing trial:

Shri Siman Singnar

S/O Sri Surja Singnar

Vill- Matipung

P.S: Diphu

District: Karbi Anglong, Assam.

Advocates appeared:

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

For the defense : Mr Rabinson Hanse

Argument heard on : 20.03.2019.

Judgment pronounced & delivered on: 27.03.2018.

JUDGMENT

- 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 16-08-2017 the informant named above lodged a written ejahar with Diphu Police Station stating inter-alia that on 11-08-2017 at 2:30 PM while the victim went out of the house for tution, she went un-trace. It was learned that the accused person enticed away the victim who was 15 years old. On receipt of the written ejahar, Diphu Police Station registered a criminal case vide Diphu Police Station Case No. 124-17 under section 365 IPC and started investigation. On completion of investigation, the charge sheet was submitted under sections 366 IPC/8 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 U/Ss 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.
- During trial, Prosecution has examined as many as 8 (eight) witnesses including the informant. Statement of the present accused was recorded

under section 313 of Cr.P.C. Defence has declined to adduce evidence. Plea of defense is of total denial.

5. **Points for determination**

- (i) Whether the present accused person alongwith other five accused persons on 11.08.2017 at about 2:30 PM at PWD Colony under Diphu Police Station kidnapped victim from the possession of the informant who was legal guardian that he thereby committed an offence punishable U/S 363 of IPC?
 - (ii) Whether the accused on / after 11-08-2017 at about 2:30 PM at PWD Colony under Diphu Police Station or in any other place made penetrative sexual assault upon the victim and that he thereby committed an offence punishable under section 4 of the POCSO Act?

Decisions and reasons thereof:

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 beyond all reasonable doubts. 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 Prabin Pradhan who has stated that he is the informant of this case. He knows the accused person. The victim is his daughter. The occurrence took place on 11.08.2017. On the day of occurrence at about 2:30 PM, his daughter went for tuition. He returned home from duty at 7:30 PM and as he did not find the daughter at home, he enquired his wife as to where their daughter had gone. His wife informed him that their daughter did not come back from tuition. Thereafter, he searched her but did not find any clue of her whereabouts. He informed the matter verbally at Diphu Police Station. Later, he came to know that the accused eloped the victim away. He went to the house of the accused and the mother of the accused informed him that the accused left for Guwahati and she asked him not to lodge any case. He suspected that the accused might have took away the victim and he lodged FIR at Diphu Police Station. Ext.1 is the ejahar and Ext.1 (1) is his signature. The victim was 15 years old at the time of occurrence. On 19th August, police recovered both the victim and the accused from nearby the house of the accused and brought them to the police station. Thereafter, the victim was taken to Diphu Civil Hospital for medical examination. The Court recorded the statement of the victim. Later, he came to know that the accused is a married person and he is the father of two children.
- 8. PW-2 is Smti. Puspanjali Pradhan who has deposed in his evidence that the informant is her husband and the victim is her daughter. She does not know the accused person. The occurrence took

place one year back. On the day of occurrence, the victim went to the tuition and as she did not come back, they started searching her. But they did not find her. Thereafter, police recovered both the victim and the accused person. She failed to say after how many days police recovered them. The victim was brought to Diphu Civil Hospital and her statement was recorded in the Court. At the time of occurrence, the victim was15 (fifteen) years old.

9. PW-3 is Shri Bikram Gowala who has deposed in his evidence that he knows the informant, the accused and the victim. The informant is his uncle. On the day of occurrence at about 6:30/7:00 PM, the informant over telephone informed him that his daughter, Smti. Kamini Pradhan did not come back from tuition. They searched for the victim, but did not find her. On search in the school bag of the victim, they found the phone number of the accused and ranged to a friend of the victim, who told them that the accused often met the victim while going to school. On suspicion upon he along with the informant and one Pranay Das went to the house of the accused, but they did not find him at his house. At that time, the wife, sister and the mother of the accused informed them that the accused went to Guwahati in the morning and did not come back. In the night of the same day, he along with his sister, Deepa Das and Pranay Das went to Guwahati in search of the victim. They searched the victim and the accused at various places of Guwahati and then at Dimapur, but did not find them. On 19th August, the sister of the accused informed him over telephone that their mother called him and asked him to come alone to the Forest Gate, Matipung. He informed this fact to police of Diphu PS and police asked him to go to that place alone and they would follow him. On reaching there, he met the mother and sister of the accused. After a while, a lady brought the victim to them. While he was taking the victim in an autorickshaw, police met him and brought them to police station by boarding on police van. On being asked, mother of the accused told him that she found the victim and the accused roaming at the street of Dimapur and took back the victim, but the accused fled away. Police took him and the victim to the place of occurrence. On that day itself, the victim was taken to Diphu Civil Hospital for her medical examination and her statement was recorded in the Court. The Court gave the victim in the custody of her father. At the time of occurrence, the victim was reading in Class-IX and she was 14/15 years old.

- 10. PW-4 is Smti. Mira Engtipi who has stated in her evidence that she does not know the informant. The accused is her son. The occurrence took place about one year back. One day police came to their house and informed her that her son took away a girl. At that time, the accused and the victim were not at their house. After few days, the accused and the victim themselves appeared before the police station. She did not ask anything to the victim.
- 11. PW-5 is Shri Babul Teron who testified that he does not know the informant, but knows the accused. The accused lives near their house. He heard that the accused eloped a girl. One day police came to the house of the accused. At that time, police took a signature from him on a paper.

He does not know after how many days the victim and the accused were recovered.

- PW-6 is Smti. Kamini Pradhan who has stated in 12. his evidence that the informant is her father. She knows the accused person. The occurrence took place on 11.8.2017. On that day at about 2-30 PM she went out for the purpose of attending tuition class. But she did not go to the tuition class, instead she went to Diphu railway station and met the accused there. Thereafter, both of them went to Dimapur. They stayed three/four days in a hotel at Dimapur. During the stay in hotel, the accused made sexual intercourse with her for three/four times. They planned to leave for Dibrugarh, but as the train communication was disrupted, they did not go to Dibrugarh. Thereafter, she alone came to Diphu by train and getting down from the train, she met the mother of the accused. Thereafter, mother of the accused took her in an auto-rickshaw for the purpose of handing her over to her brother. She could not say as to where the mother of the accused took her. Then the mother of the accused called her (victim) brother and handed her over to him. At the time of occurrence, she was 15 years old. Police of Diphu Police Station brought her to the PS and got her medically examined and recorded her statement. Ext.2 is her statement and Ext.2 (2) is her signature.
- 13. PW-7 is Dr Minakshi Terangpi who deposed that on 19.8.2017 while she was working as Medical and Health Officer at Diphu Civil Hospital she examined Miss Kamin Pradhan in connection with Diphu PS Case No.124/2017 on police requisition and on examination she found in her person as follows:

No external injuries on her body, no swelling, no tears, no bruise and no abrasion seen on her genital parts. In labia minora, she found no injury and no bleeding and tear in fouchette and vulva. Perineum is found normal and hymen was torn. Vagina and cervix admits 1 finger and in anus, found no injury and bleeding. Urine test did not show pregnancy. No spermatozoa was detected on posterior vaginal swab examination. PW-7 opined that as per radiological examination, the age of the victim was below 18 years. Ext.3 is the medical examination report and Ext.3 (1) is her signature.

- 14. PW-8 is Shri Hementa Chakraborty who investigated the case. During investigation, he recovered the victim, recorded the statements of the witnesses and prepared the sketch map. He got the victim medically examined and statement of the victim recorded and prepared the sketch map. He also arrested the accused and forwarded him to the Court and prayed for recording his confessional statement. He collected the medical examination report of the victim. During investigation, he prayed before the Court to add the Sec.8 of the POCSO Act as the victim was below 18 years as per medical completion examination report. On investigation, he submitted charge-sheet U/S 366 of IPC and 4 of the POCSO Act against the accused, Shri Siman Singnar. Ext.1 is the ejahar, Ext.4 is sketch map and Ext.5 is charge-sheet. Ext.4 (1) and Ext.5 (1) are his signatures.
- 15. For attracting the sections 363 of the IPC and 4 of the POCSO Act, the victim needs to be below 18 years. PW-1 who is the father of the victim has clearly stated in his evidence as well as in his

ejahar that at the time of occurrence the victim was 15 years old. Similarly PW-2 who is mother of the victim, PW-3 and PW-6 categorically have stated that at the time of occurrence, the victim was 15 years old. The parents are to the best persons who know actual age of their children. PW-7 is the medical officer who has stated that on examination of victim she found her to be below 18 years. The defence has not disputed age of the victim below 18 years at the time occurrence. Taking all aspects I have come to conclusion that at the time of occurrence, the victim was below 18 years.

- 16. Ext-3 is the medical report of the victim which shows that hymen of the victim was found to have been torn up. Ext-2 is the statement of the victim recorded under section 164 of the CrPC wherein she stated that the accused person made physical relation with her while she was in Dimapur with him. It also shows that on 11-08-2017 the accused person took the victim to Dimapur and after spending on night in Dimapur Rail Station, they went to Dibrugarh where in a Hotel they stayed 5 days. The fact itself suggests that sexual intercourse between the accused and the victim might have taken place.
- 17. From the evidence of PW-1 who is the father of the victim it appears on 19-03-2017, the victim was recovered from the possession of the accused. Evidence of PW-3 also shows that the victim was recovered from the possession of the mother of the victim.
- 18. In this case, the victim is most important witness. Her evidence shows that on 11-08-2017 at

2:30 PM, she fled away with the accused person to Dimapur wherein they stayed in a hotel for 3/4 days and at that time the accused made sexual intercourse. PW-7 is Medical Officer who examined the victim. Ext-3 is the Medical report. From evidence of PW-7 and Ext-3 it appears that hymen of the victim was found torn. From the evidence of victim marked as PW-6 shows that the accused made sexual intercourse with her for 3/4 times while they were in hotel at Dimapur.

- 19. It has been submitted by the learned Lawyer appearing on behalf of the accused person that the victim out of love fled away with the accused person and as such the section 4 of the POCSO Act will not be attracted to the instant case. From the cross examination of the victim it appears that the victim out of love fled away with the accused person. It is established principle that minor consent is no consent.
- 20. In this instant case the investigating officer got the confessional statement of the accused person recorded in the Court. The confessional statement clearly shows that the victim fled away with the accused person and that they stayed in a hotel wherein he made sexual intercourse with the victim. The prosecution has not examined the Magistrate who recorded confessional statement to prove the confessional statement. In the instant case victim is a most vital witness. I find no way to discard the evidence of victim on material point.
- 21. The section 363 of the IPC reads thus: "The **Indian Penal Code**. **363**. Punishment for kidnapping.—Whoever kidnaps any person from

1[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine". The **section 361** of the IPC relates to kidnap of minor female from the legal guardian which reads thus: "Kidnapping from lawful guardianship; Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship".

- 22. The section **4 of the POCSO Act** relates to punishment for committing penetrative sexual assault which reads thus: "Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine".
- 23. In view of the discussion made above I am convinced to hold that the prosecution has succeeded in establishing its case under sections 363 of the IPC/4 of the POCSO Act.

ORDER

- 24. In the result, I find the accused person Sri Siman Singnar guilty under sections 363 of the IPC/ 4 of the POCSO Act and accordingly he is convicted.
- 25. On the point of sentence, the accused person is heard and to that effect his statement is recorded.

It has been submitted by the learned lawyer appearing on behalf of the accused person that the accused person is a very poor person who is only earning member of his family consisting of his wife and 2 children and as such he deserves to be punished leniently. He has further submitted that if the accused person is order to undergo imprisonment for long period, his family member will have to spend days without food. There is a no freedom on the part of Judge to award sentence beyond the prescribed period. Taking all aspects into consideration the accused person is ordered to undergo SI for 6(Six) months under section 363 of the IPC and RI for 7(seven) years and to pay fine of Rs. 500/- id SI for 1(One) month under section 4 of the POCSO Act. The sentences will run concurrently. Set off the earlier detention period. Let a certified copy of the Judgment be furnished to the accused person at free of cost. No compensation is awarded. Let a copy of the Judgment be sent to the District Magistrate in term of the section 365 of the CrPC. Accordingly this case is disposed of on contest.

26. Given under hand and seal of this Court today this the 27th day of March, 2019.

Dictated taken by Shri K.J. Konwar, Stenographer, Grade-I.

Dictated and corrected by me

Special Judge,

Special Judge,

Karbi Anglong, Diphu. Diphu. Karbi Anglong,

<u>APPENDIX</u>

Prosecution witnesses:

PW1- Shri Prabin Pradhan

PW2- Smti. Puspanjali Pradhan

PW3- Shri Bikram Gowala

PW4- Smti. Mira Engtipi

PW5- Shri Babul Teron

PW6- Smti. Kamini Pradhan

PW7- Dr Minakshi Terangpi

PW8- Shri Hementa Chakraborty

Defence witness: Nil.

Prosecution exhibits:

Ext.1- Ejahar

Ext.2- Statement of the Victim

Ext.3- Medical Examination Report

Ext.4- Sketch Map

Ext.5- Charge Sheet

Defence exhibit: Nil.

Special Judge, Karbi Anglong, Diphu.