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. 04/2017 corresponding to GR Case No. 363/2017 & Diphu Police Station Case No. 76/2017 Under Sections 366(A) IPC/ R/W 4 of the

POCSO Act.

State of Assam

Versus

Shri Rajesh Shah

Name of informant/complainant:

Shri Sanjay Ray

S/O Shri Ram Bahadur Ray

Village: Panbari, Diphu

P.S: Diphu

District: Karbi Anglong, Assam.

Name of the accused person facing trial:

Shri Rajesh Shah

S/O Shri Nokhi Shah

Village: Panbari, Diphu

P.S: Diphu

District: Karbi Anglong, Assam.

Advocates appeared:

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

For the defence : Mr. Bidhan Mazumder

Date fixed for Argument : 04.06.2019

Date(s) fixed for Judgment : 15.06.2019/17.06.2019

N:B=As I was on Casual Leave the Judgment could not be pronounced and delivered on date fixed.

JUDGMENT

- It is a case of kidnap of minor female and penetrative sexual assault on her alleged to have been committed by the accused.
- 2. The prosecution case in brief is that on 22.05.2017 the informant named above lodged a written ejahar with Diphu Town Out Post stating inter alia that on 21.05.2017 at 6:00 AM the accused enticed away his victim sister having age of 17 years from the house and her where about could not be traced out and the same was forwarded to Diphu Police Station for registering a criminal case. On receipt of written ejahar, Diphu Police Station registered a criminal case vide Diphu Police Station case No. 76/2017 under section 366 A IPC. On completion of investigation, the charge sheet was submitted under section 366 A of the 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 section 4 of the POCSO Act and accordingly, the charge was 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 5 (five) witnesses. The accused person has been examined under section 313 CrPC. The defence has examined none. Plea of defence is of total denial.

5. **Points for determination**

Whether the accused on or before 15.07.2018 at Panbari under Diphu 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. Both PW-1 and PW-2 is the brother of the victim. PW-3 is the victim. Both of them categorically have stated in their evidence that at the time of occurrence, the victim was 17 years old. PW-4 is the medical officer and Ext-3 is her medical report. Her evidence and Ext-3 show that X-Ray couldn't be done on the victim as she was in early stage of pregnancy. For ossification test X-Ray is necessary.

There is no documentary evidence regarding age proof of the victim. Only evidence of PW-1 and PW-3 is on record for opinion regarding age of the victim at the time occurrence. Though the defence has not dispute the evidence that at the time of occurrence the victim was 17 years. There is undisputed evidence on record that the victim became mother of a child from the side of the accused, that at present the victim has completed 18 years that the victim is staying in the house of the accused and the accused has been in the jail hazot since 08.07.2017. For attracting the sections 363 of the IPC/6 of the POCSO Act the victim needs to below 18 years. During examination of the accused under section 313 of the CrPC has stated that at the time of occurrence, the victim was 17 years is false. Without documentary evidence and ossification test I feel hesitation to hold that at the time of occurrence the victim was below 18 years.

8. In this case victim is considered to be a star witness. Her evidence clearly indicates that she fled away with the accused person on her sweet will and that the accused made sexual intercourse with her with consent as result of which she gave birth to a child.

ORDER

9. In the result, I find that the prosecution has failed to prove its case beyond all reasonable doubts against the accused person. Hence on benefit of doubts, accused Shri Rajesh Shah is here by acquitted from the charge brought against him and let him set at liberty forthwith. The

Superintendent of District Jail Diphu is asked to release the accused if he is not wanted in other case. Accordingly this case is disposed of on contest.

10. Given under my hand and seal of the Court on this 17th June, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

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