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. 18/2017 corresponding to GR

Case No. 933/2017 & Khatkhati Police Station

Case No. 134/2017

Under Sections 363/376 IPC/ R/W 4 of the

POCSO Act.

State of Assam

Versus

Dilwar Hussain

Name of informant/complainant:

Musstt Mojiron Nessa

W/O Najimuddin

Dudu Colony

PS: Khatkhati

District: Karbi Anglong, Assam

Name of the accused person facing trial:

Dilwar Hussain

S/O Kabir Hussain

Vill- Dudu Colony

P.S: Khatkhati

District: Karbi Anglong, Assam.

Permanent Address:

Durga Bazar

PS: Badarpur

District: Karimganj

Advocates appeared:

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

For the defence : Smti Kanika Biswas

Date fixed for Argument : 13.05.2019

Judgment pronounced & delivered on: 13.05.2019

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 21.11.2017 the informant named above lodged a written ejahar with Khatkhati Police Station stating inter alia that on 20.11.2017 at 7:30 PM while her victim daughter having age of 14 years was going to shop the accused took away her forcibly and kept her somewhere concealed. On receipt of written ejahar, Khatkhati Police Station registered a criminal case under section 363 IPC and started investigation. On completion of investigation, the charge sheet was submitted under sections 363/376 IPC/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 sections 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 1
 (one) witness. The examination of the accused person
 under section 313 CrPC is dispensed with. Plea of defense
 is of total denial.

5. **Points for determination**

- (i) Whether the present accused person on 20.11.2017 at about 07:30 PM at Dudu Colony under Khatkhati Police Station kidnapped victim from the possession of the informant who was legal guardian?
 - (ii) Whether the accused on or after 20.11.2017 at about 07:30 PM at Dudu Colony or any other place under Khatkhati 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. PW-1 is the victim who has clearly stated in her evidence that at the time of occurrence she completed 18 years and that she fled away with the accused on her sweet will. Her evidence also shows that at present she is mother of a child having age of 5(Five) months from the

side of the accused and that she desires to live with the accused person as husband and wife.

- 8. The main ingredient for attracting any provision of the POCSO Act, the victim must be a child which is defined under section 2(d) of the POCSO Act that a person who is below 18 years is called a child. In this case, no Birth Certificate has been seized. The investigating Officer after recovery of the victim got her medically examined. The medical examination report shows that the victim is above 18 years. Evidence of the victim itself shows that she obtained 18 years at the time of occurrence. It has been stated in the FIR that at the time of occurrence the victim was 14 years. Ext-2 is the statement of the victim girl wherein the victim also stated that at the time of occurrence she completed 18 years. Taking all aspects into consideration, I am convinced that at the time of occurrence the victim completed 18 years.
- 9. In the view of the discussion made above I find no case under sections 363 IPC/ 4 of the POCSO Act is made out.

ORDER

10. In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubt. Hence, accused is here by acquitted from the charges brought against him and let him set at liberty forthwith. Superintendent of the District Jail, Karbi Anglong, is asked to release the accused person if he is not wanted in any other case. Inform him accordingly. Accordingly this case is disposed of on contest.

Given under my hand and seal of the Court on this 13th
May, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

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