# 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. 26/2018** corresponding to GR Case No. 751/2018 & Anjokpani Police Station Case No. 06/2018 Under Sections 365 of the IPC/4 of the POCSO Act.

State of Assam

Versus

Md. Romiz Uddin

## Name of informant/complainant:

Shri Bikram Pradhan

Son of Shri Krishna Pradhan

Village: No. 5 Puthizuri

PS: Anjokpani

District: Karbi Anglong, Assam

#### Name of the accused person facing trial:

Md. Romiz Uddin

S/O Md Nazamuddin

Village: Sonajuri

PS: Samaguri

District: Nagaon, Assam

# **Advocates appeared:**

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

For the defence : Mrs. R. Bharali

Argument heard on : 05.08.2019

Judgment pronounced & delivered on: 05.08.2019

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

- 1. It is a case of kidnapping of minor child and penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 19.07.2018 the informant named above lodged a written ejahar with Anjokpani Police Station stating inter alia that on 15.07.2018 in the evening his victim sister having age of 17 years went missing from the house and during the search it was learnt that the accused enticed away his victim sister. On receipt of the ejahar, O/C Anjokpani Police Station registered a case vide its PS case No. 06/2018 under sections 365 of the IPC. On completion of investigation I.O. submitted the charge-sheet under sections 365 of the IPC/4 of the POCSO Act against the accused person. Hence the prosecution has come up.
- 3. On completion of appearance of the accused person, copy was furnished to him. Having very carefully gone through the submissions duly advanced by the learned lawyers of the both sides as well as case diary I found sufficient grounds for presuming that the accused person committed the offence under sections 363 of the IPC/ 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. During trial Prosecution has examined 3 (Three) witnesses including the informant and the alleged victim.

Statement of the accused person was recorded under section 313 of Cr.P.C. Defence declined to adduce evidence. Plea of defence is of total denial.

#### 5. **Point for determination is:**

- (i) Whether the accused person on 15.07.2018 in the evening at No. 5 Puthizuri under Anjokpani Police Station kidnapped the victim who was 17 years old?
- (ii) Whether the accused person on 15.07.2018 in the evening at No. 5 Puthizuri under Anjokpani Police Station or any other place caused penetrative sexual assault upon the victim who was 17 years old?

#### 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. Let us first see whether at the time of occurrence the victim was child as defined under section 2 (d) of the POCSO Act. According to section 2 (d) of the POCSO Act, a person

who has not completed 18 years is considered to be a child. Ext-1 is the ejahar wherein it has been stated that at the time of occurrence the victim was 17 years old.

- 8. PW-1 is the informant brother who has admitted in his cross examination that at the time of occurrence the victim was 18 years old and that at the time of admission of the victim age of the victim girl was given one and half years less from the actual age. Evidence of PW-2 is totally silent regarding the age of the victim.
- 9. PW-3 is the victim who has clearly state in his evidence that at the time of occurrence she was 18 years old. Ext-2 is the statement of the victim girl which shows that at the time of occurrence she was 17 years 6 months old. Medical report shows that at the time of occurrence she was 17/18 years old. Photocopy of admit card of HSLC examination available with the case record shows that at the time of occurrence the victim was 17 years 4 months 2 days old. In view of the discussion made above there is a doubt at the time of occurrence the victim was below 18 years. Hence I convinced to hold that at the time of occurrence the victim was not child.
- 10. From the evidence of the victim it appears very clearly that she fled away with the accused person on her sweet will. It also appears that the accused made sexual intercourse on her sweet will. In her cross examination the victim marked as PW-3 has stated that her parents at present have no objection if she will stay with the accused person as husband and wife and that they have no objection if the accused person is acquitted. In view of the discussion

made above, I find no way to disturb the conjugal life of the accused with the victim.

## ORDER

- 11. In the result, I find that the prosecution has failed to prove its case against the accused person beyond all reasonable doubts. Hence on benefit of doubt he accused person is hereby acquitted of the charges brought against him and let him set at liberty forthwith. The bail bonds shall remain cancelled after 6(six) months. Accordingly, this case is disposed of on contest.
- 12. Given under hand and seal of this court today, the 05<sup>th</sup> day of August, 2019.

Dictated and corrected by me.

Special Judge, Karbi Anglong, Diphu.

Special Judge, Karbi Anglong, Diphu.