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

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special Case No. 20/2017 corresponding to GR Case No.598/2017 & Khatkhati Police Station Case No.

88/2017

Under Sections 363 of IPC and 6 of the POCSO Act

State of Assam

Versus

Md Jamir Uddin

Name of informant/complainant:

Mustt Toslima Begum

W/o Rafiqul Islam

Village: Balijan Khan Bosti

P.S: Khatkhati

District: Karbi Anglong.

Name of the accused person facing trial:

Md Jamir Uddin

S/O Md Samar Uddin

Vill-Bowalguri

PS: Laharighat

District-Morigaon.

Advocates appeared:

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

For the defense : Rashmi Bharali

Argument heard on : 17.12.2018.

Judgment pronounced & delivered on: 19.12.2018.

JUDGMENT

- It is a case of kidnapping and aggravated penetrative sexual assault alleged to have been committed by the accused person.
- 2. The prosecution case in brief is that on 02.8.2017, the informant-Mustt Taslima Begum lodged an ejahar at Khatkhati Police Station stating inter alia that on 01.8.2017 at about 8 AM, her daughter-Miss Sultana Begum aged about 12 years went to school. She could learn from eye witnesses that the accused boarded her daughter in an auto- rickshaw and moved towards Dimapur from Balijan. She searched all probable places, but failed to locate her whereabouts. On receipt of the ejahar, O/C, Khatkhati Police Station registered a case vides Police Station Case No.88 of 2017 U/S 363 of IPC. On completion of investigation, I.O. submitted the charge-sheet U/S 363 of IPC R/W Section 4 of the POCSO Act against the accused, Md Jamir Uddin. 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 submissions of learned lawyers of both sides as well as case diary, this Court found there was ground for presuming that the accused person committed the offenses under sections 363 of the IPC / 6 of the POCSO Act. Accordingly, the charges were framed. The particular of the offences charged were duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During trial, Prosecution side has examined as many as 12(twelve) witnesses including the complainant and

alleged victim. Statement of the accused was recorded under section 313 of Cr.P.C. Defense declined to adduce evidence. Plea of defense is of total denial.

5. **Points for determination are:**

(i)Whether the accused person on 01.8.2017 at about 8 AM at Balijan Khan Basti under Khatkhati Police Station kidnapped Miss Sultana Begum aged 12 years and enticed her out of keeping of the lawful guardianship without his consent and that he thereby committed an offense punishable U/S 363 of IPC?

(ii)Whether the accused person on the same date, time and place caused aggravated penetrative sexual assault to Miss Sultana Begum aged 12 years and that he thereby committed an offense punishable U/S 6 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 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 Mustt Taslima Begum who is the informant of this case. She has stated in her evidence that the victim is her daughter. She knows the accused person. The incident occurred on 03.8.2017. On the day of occurrence at about 7 AM, the alleged victim went to school, but as she did not come in time from school, she started searching her. Thereafter, she lodged the ejahar at police Station. She suspected that the accused might have lured her daughter away and presuming this, she collected the home address of the accused from his relatives. She along with her brotherin-law went to the house of the accused located at Goalguri of Laharijan and found the accused and her daughter there after one month. She insisted both of them on coming to her house back, but they did not come. After nine months of the occurrence, she furnished the address of the accused person to Khatkhati Police. Later, police recovered the victim along with the accused person and took them to the police station. At the time of occurrence, the victim was 13(thirteen) years old. Police got her daughter medically examined at Diphu Govt. Hospital and her statement recorded in the Court. Police seized the birth certificate of the victim. She put her signature in the seizure list. After return of the victim, on being asked she told her that she eloped with the accused person as per her will and both of them lived as husband and wife.
- 8. PW-2 is Miss Sultana Begum who has deposed that the informant is her mother. She knows the accused person. The incident took place on 01.8.2017. On the day of occurrence at 7 PM, she went to school and on the way she boarded in an auto-rickshaw with the accused and left for Khatkhati. Then the accused took her to a place named Bobalguri of Morigaon by a bus and kept her in his house.

After three days, their marriage was solemnized. She started living with the accused as husband and wife. At the time of occurrence, her age was 18(eighteen) years and she was reading in Class-VI. After nine months of the occurrence, police recovered her and brought her to Mairabari Police Station along with the accused. Thereafter, on the night itself, she was taken to Diphu Police Station. Police got her medically examined and her statement recorded. Ext.1 is her statement and Ext.1(1), 1(2), 1(3) and 1(4) are her signatures.

- 9. PW-3 is Md Nasir Uddin and PW-4, Md Nazrul Islam are hearsay witnesses. They know the informant, the accused and the victim. They only heard that somebody eloped the daughter of the informant. Later, they could know that the accused had lured the victim away.
- 10. PW-5 is Md Rubul Hussain who has deposed that he knows the informant, the accused and the victim. The incident occurred in the month of August, 2017. On the day of occurrence at about 8 AM while he was going out for his regular work, he noticed a girl being dressed by school uniform going with a boy in an auto-rickshaw. As he found the informant searching her daughter, he informed the said fact to her. He does not know later episode of the case. According to him, the girl was about 12/13 years old.
- 11. PW-6 is Md Hussain Ali who is a hearsay witness. He has stated in his evidence that he could learn the fact of elopement of a girl by the accused from the other people. He knows the informant and the victim since long.

- 12. PW-7 is Md Safiqul Islam who is also hearsay witness. He has stated in his testimony that on 01.8.2017 in the evening, he heard that the accused eloped the victim away. He knows the informant, accused and the victim. He further told that at the time of occurrence, the victim was 13/14 years old.
- PW-8 is Shri Mwblik Brahma who is one of the investigating officers of this case. He has deposed in his testimony that prior to him, there were two investigating officers who had already investigated the case. At the time of his investigation, he was working as SI at Rongbongway Police Station and as per instruction of the Sub-Divisional Police Officer, Bokajan, he took the charge of investigation. From perusal of the case diary, he came to know that SI Hira Gogoi drew up the sketch map. Ext.2 is the ejahar and Ex.2(1) is the signature of the then O/C of Khatkhati PS. During the course of investigation, he went to Mairabari Police Station of Morigoan district and brought the accused and the victim to their police station. He arrested the accused person and on completion of medical examination, he forwarded the accused to the Court on 21.6.2018. On the same day, he sent the victim to Diphu Civil Hospital for medical examination. He prayed before the Court for recording statement of the victim. He seized the birth certificate of the victim. Ext.3 is the said seizure list. He prayed before the Court to add Sec.4 of the POCSO Act. Ext.4 is the said prayer and Ext.4(1) is his signature. On completion of his investigation, he submitted charge-sheet U/S 363 of IPC and U/S 4 of the POCSO Act. Ext.5 is the charge-sheet and Ext.5(1) is his signature.
- 14. PW-9 is Dr Bimal Hanse who has deposed that on 22.6.2018 while he was working at Diphu Civil Hospital as M

- & H.O.I, he examined Miss Sultana Begum for determination of her age. On examination, he found her age below 16 years and between 14-15 years. Ext.6 is his medical report and Ext.6(1) is his signature.
- 15. PW-10 is Shri Hira Gogoi, another investigating officer who has deposed that on registration of the case, the O/C concerned endorsed him to investigate case. During his investigation, he visited the place of occurrence and recorded the statements of the informant and other witnesses. He prepared the sketch map. Ext.2 is the said sketch map and Ext.2 (1) is his signature.
- 16. PW-11 is SI Joseph V. Kevom, in fact, did not do anything as regards investigation. He made communication with the O/C of Laharighat Police Station over phone searching whereabouts of the accused and the victim. But he found nothing positive from Laharighat Police Station. Later, he again contacted the informant regarding any clue of their stay. At that time, he was transferred to Bokajan Police Station and as such, he handed over the case diary to the O/C, Khatkhati Police Station.
- 17. PW-12 is Dr Karbon Teronpi who has stated that on 21.6.2018 while she was working as SDM&HO, she examined Sultana Begum in connection with Khatkhati Police Station Case No.88/2017. She further stated that the alleged victim refused medical examination. Ext.7 is medical report and Ext. 7(1) and Ext.7(2) are her signatures. She opined that as per report of radiologist, the age of the victim was 16 years(14-15) years. She claimed the radiologist's report 100 per cent genuine and it is done on the basis of X-ray.

- 18. Parents are normally right persons who can say exact age of their children. For attracting the sections under which charges were framed, the victim must be a child. "Child" is defined in the section 2(d) of the POCSO Act. According to the section 2 (d) of the POCSO Act, any person who is below 18 years is a child. According to PW-1 who is mother of the victim, at the time of occurrence, she was 13 years old. According to the victim at the time of occurrence she was reading in class VI and was 18 years old. PW-3, PW-5 and PW-7 seem to be neighbourers of the informant who have stated in his evidence that at the time of occurrence, victim was 12-13 years old. PW-9 and PW-12 are medical officers and according to them, at the victim was below 16 years. Taking all aspects into consideration, I find that the victim has deposed false out of love that at the time of occurrence, she was 18 years. A student of class VI cannot be more than 16 years. Now I have come to conclusion that the victim was purely child.
- 19. In the instant case victim is considered to be material witness. Her evidence shows that in the morning of the day of occurrence, she fled away with the accused person. The accused took her to their house situated at Babalguri of Morigaon and kept her there. After completion of their marriage, she started living with the accused as husband and wife. She was recovered from the house of the accused person with help of Police from Moirabari police station after 9 months. There is no evidence on record showing that the accused kept the victim in his house without consent of her legal guardian. It is the established principle that minor consent is no consent. Though there is evidence that the victim fled away with the accused person on her sweet will

but it would be held that the accused took away the victim from her legal guardian because the victim was minor.

- 20. The victim marked as PW-2 has herself stated in her testimony that she was in the house of the accused person for 9 (nine) months as husband and wife. PW-12 is the medical officer before whom the victim was brought medical examination in order to ascertaining whether she was subjected to penetrative sexual assault but she refused to go medical examination. The defence has not disputed the evidence of the victim that she was in the house of the accused person as husband and wife. Now it can be safely held that physical relation between the accused and the victim took place more than two times.
- 21. From the cross-examination of PW-1 who is the mother-cum-informant of this case it is reflected that initially she intended to withdraw the case if the accused and the victim would come to her house. The POCSO Act does not allow any minor female child to stay with a male person as husband and wife though she or her guardian has no objection.
- 22. It has been submitted by the learned lawyer appearing on behalf of the accused person that the victim fled away with the accused person on her sweet will and as such it does not attract the sections 363 IPC/6 of the POCSO Act. Consent of the minor girl is immaterial. Very object of POCSO Act is to protect and prevent the children not to be abused. The Act also aims at protecting childhood and youth of the children. There is no medical evidence showing that the victim was subject to sexual intercourse. However her evidence very clearly shows that the accused made sexual intercourse with

her. There is no evidence on record showing that how many times the accused made sexual intercourse with the victim. Taking the discussions made above I feel hesitation to hold that the accused committed aggravated penetrative sexual assault towards victim. However it can be presumed safely that the accused committed penetrative sexual towards victim punishable under section 4 of the POCSO Act.

ORDER

- 23. In the result I find the accused guilty under section 363 IPC/4 of the POCSO Act and accordingly he is convicted.
- 24. On the point of sentence accused is heard and to that effect his statement is recorded. Accused has prayed for leniency in sentencing him as he is the only earning member of his family consisting of his mother, wife and himself. It has been submitted by the learned lawyer appearing on behalf of the accused person that it is a fit case where benefit laid down under Provision of the Probation of the Offenders Act can be extended to the accused person. Taking all aspects into consideration I do hereby order the accused person to suffer RI of 6 months for the section 363 IPC and RI of 7 years and to pay fine of Rs. 1000/- i/d SI of 2 months for the section 4 of the POCSO Act. Both sections will run concurrently. Set off the earlier detention period. Let a certified copy of this Judgment and Order be supplied to the accused person at free of cost.
- 25. It is evident that mother of the victim who is informant of this case is not financially sound. For re-habilitation of the victim in my considered opinion she needs financial assistant. Hence I recommend compensation under the

Victim Compensation Scheme as laid down under section 357 A of the CrPC to be awarded to the victim through her informant mother by the DLSA, Diphu, Karbi Anglong after due inquiry. In the mean time a interim compensation of Rs. 10000/- to be awarded to the victim through her informant mother. DLSA Karbi Anglong shall take necessary steps. Inform accordingly.

26. Given under my hand and seal of the Court on this 19th December, 2018 at Diphu, Karbi Anglong.

Special Judge, Karbi Anglong, Diphu Special Judge Karbi Anglong, Diphu

Appendix

Prosecution Witnesses.

PW-1 Smt. Taslima Begum

PW-2 is victim

PW-3 is Md. Nasiruddin

PW-4 is Md. Nazurul Hussain

PW-5 is Md. Rubul Hussain

PW-6 is Md. Hussain Ali

PW-7 is Md. Sofiqul Islam

PW-8 is M. Brahama

PW-9 is Dr. Bimal Hanse

PW-10 is Hira Gogoi

PW-11 is Joseph b Kebom

PW-12 is Dr. Kabon Teronpi

Prosecution Exhibited:

Ext-1 is statement of the victim

Ext-2 is Ejahar

Ext-2 A is sketch map of PO

Ext-3 is seizure list

Ext-4 is prayer

Ext-5 is Charge Sheet

Ext-6 is Medical Report

Ext-7 is Medical Report

Defence Witnesses: Nil

Defence Exhibits: Nil

Special Judge, Karbi Anglong, Diphu