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. 10 of 2018 corresponding to GR Case No.432/2018 & Barpathar Police

Station Case No. 24/2018

Under Section 363 of IPC and U/S 4 of the

POCSO Act.

State of Assam

Versus

Shri **Akash** Mech

Name of informant/complainant:

Smti. Ujali Das Sarkar

Wife of Sri Ronti Sarkar

Vill-Thekrajan PS-Barpathar

Dist-Karbi-Anglong

Name of the accused person facing trial:

Shri Akash Mech

S/O Late Lakshi Mech Vill-Na-Singimarigaon

PS: Barpathar

District-Karbi Anglong.

Advocates appeared:

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

For the defense : Mrs R. Bharali

Argument heard on : 18.12.2018/21.12.18/07.01.2019

Judgment pronounced & delivered on: 21.12.2018/21.01.2019

JUDGMENT

- 1. 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 30.4.2018, the informant-Smti Ujali Das Sarkar lodged a written ejahar at Barpathar Police Station stating inter alia that on the same day at about 4 PM, the accused Shri Akash Mech kidnapped her victim daughter aged about 16 years from her residence situated at Khakrajan under Barpathar Police Station. On receipt of the ejahar, O/C, Borpathar Police Station registered a case vide Borpathar Police Station Case No.24 of 2018 under section 363 of IPC and started investigation. During investigation the victim was recovered from the possession of the accused. On completion of investigation, I.O. submitted the chargesheet under section 363 of IPC R/W Section 4 of the POCSO Act against the accused Shri Akash Mech. Hence the prosecution case.
- On completion of appearance of the accused person, this case was transferred to this Court as this case needs to be tried by this court being Special Court under POCSO Act. After renumbering the case, trial was started. On completion of appearance of the accused person in this Court, having very carefully gone through submissions of learned lawyers of both sides as well as case diary, this Court found sufficient grounds for presuming that the accused person committed the offences under sections 363 of the IPC / 4 of the POCSO Act. Accordingly, the charges were framed. The particulars 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 side has examined as many as 7(seven) witnesses including the complainant and alleged victim. The accused persons were recorded U/S 313 of Cr.P.C. Defence has examined none. Plea of defense is of total denial.

5. Points for determination are:

(i) Whether the accused person on 30.4.2018 at about 4PM at Vill-Khakrajan under Barpathar Police Station kidnapped the victim girl aged 16 years from the lawful guardianship without his/her consent?

(ii)Whether the accused person on the same date, time and place caused aggravated penetrative sexual assault towards the victim girl?

6. **Decisions and reasons thereof:**

I have very carefully gone through verbal arguments advanced by the learned counsel 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 to prove its case. 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. PW1- is Shri Roti Sarkar who has deposed in his deposition that he knows the informant, the accused and the victim girl. The incident occurred in the year 2018. On the day of occurrence at about 4 PM, the victim went missing from their house. The victim is his daughter. On searching, they could know that the accused had kidnapped her. At the time of occurrence, the victim was 16 years old. Knowing the fact of kidnapping his daughter, they went to the house of the accused, but could not find him. They got information that the accused kept the victim hidden in a house at Da-hingimari area. Then they informed the police about the fact of keeping his daughter. We along with the police went to the place of keeping the victim and met the accused and victim there. Police brought the accused and the victim girl to the police station and got the victim medically examined and the statement of the victim recorded in the Court. Police seized the admit card of the HSLC belonging to the victim along with her birth certificate. Ext.1 is seizure list and Ext.1 (1) is his signature. Later, police returned both the documents.
- 8. PW-2 is Smti Ujali Das Sarkar who is the informant of this case. She has deposed in her deposition that the victim is her daughter. She knows the accused person. The incident occurred on 30.4.2018. She got acquainted with the family of the accused in the matter of purchasing land. Prior to the occurrence, the victim stayed few days in the house of the accused under the care of the mother of the accused. On 30th April at about 4-30 PM the victim went out towards Shantipur. Thereafter, she searched the victim, but she did not find any clue of her whereabouts. Then she informed the fact of missing of her daughter to the sister-in-law of the accused. Sister-in-law of the accused

informed her that the accused took the victim away from Santipur. She informed the matter to police. Police gathered information from the sister-in-law of the accused that they (accused and victim) were taking shelter in a house about 2 KM away from her house. Then the police along with her husband recovered their daughter along with the accused at 12 midnight from that house and brought them to the police station. She lodged a written ejahar in this regard. On the next day, police got the victim medically examined in Diphu Civil Hospital and her statement recorded in the Court. Ext.2 is the ejahar and Ext.2(1) is her signature. Police seized admit card of the HSLC examination and the birth certificate belonging to the victim. She put her signature in the seizure list marked as (Ext.1). Ext.1(2) is her signature.

- 9. PW-3 is Shri Lakhindra Das who is a hearsay witness. He is the driver of the vehicle belonging to Borpathar Police Station. He has deposed in his deposition He knows the informant and the alleged victim. He does not know the accused. He only heard the fact of kidnapping the daughter of the informant by the accused and the fact of her recovery. At the time of occurrence, the victim was 15-16 years old.
- 10. PW-4 is Smti. Junu Gogoi who is a hearsay witness. She has stated in her evidence that the occurrence took place in the month of "Bohag" of this year. Her house is situated near the house of the victim. She came to know that in the afternoon of the day of occurrence the victim went out from the house for going to market but she did not come home back. Later on she heard that the victim was recovered from the house of the accused and that on the day of the occurrence the accused forcibly made sexual intercourse with the victim.

11. PW-5 is the victim of this case who has deposed in her testimony that the informant is her mother. She knows the accused person. The incident took place at the time of Bohag Bihu of this year. As per request of the mother of the accused, her mother allowed her to be guest in the house of the accused for two days. The accused has a sister whose age appears to be same with her. After staying two days in the house of the accused, she returned to her house. One day, the accused met her at Shantipur Bazar and asked her to go to his house. As she refused, the accused told her that he took her photographs while she was taking bath in their house on the last day of her stay therein. The accused threatened her that he would upload the photographs in the Facebook if she did not come to their house with him. In fear, she went with him to their house and requested him to delete those photographs. In stead of complying her request the accused took her to his uncle's house on foot and they reached the uncle's house at 7 PM. At that time, the brother of the accused was also there. When the accused and his brother came to know that her mother informed the police, they wanted to solemnize the marriage by putting vermilion (sindur) on her forehead. The accused made intercourse with her forcefully. On that very night, police came to the house of the accused and apprehended him. Thereafter, police brought her along with the accused to the police station. The accused made intercourse with her once only. Police got her medically examined and her statement recorded in the Court. Ext.3 is her statement and Ext.3(1) and 3(2) are her signatures. At the time of ocurrence, she was 16 years old. Police seized her birth certificate and later handed over to her. Her date of birth of is 14.01.2002.

- 12. PW-6 is Dr. Karik Kropi who has deposed in the deposition that on 02.5.2018 while she was working at Diphu Civil Hospital she examined Smti.Priya Sarkar in connection Borpathar Police Station Case No.24/2018. In her examination, she did not find any injury mark on her body. She also found hymen absent. According to X-ray report, the age o the victim was below 18 (15-16) years. As per laboratory examination, no spermatozoa was detected. She opined that alleged history of sexual intercourse was present. Ext.3 is the medical examination report and Ext.3 (1) and 3(2) are her signatures.
- 13. PW-7 is Shri Padmeswar Saud who is the investigating officer of this case. He has stated in his testimony that during investigation, he drew the sketch, recorded the statements of the witnesses, recovered the victim and arrested the accused person. He also seized birth certificate and the HSLC admit card of the victim. Considering the statement of the victim, he prayed before Court to add Sec.4 of the POCSO Act. Ext.5 is the birth certificate of the victim and Ext.6 is the Admit Card of HSLC of the victim. Ext.7 is the prayer made before the Court for adding section 4 of the POCSO Act. On completion of his investigation, he submitted charge-sheet under sections 363 of IPC/ 4 of the POCSO Act against the accused persons. Ext.8 is the charge-sheet and Ext. 8(1) is his signature.
- 14. At first the court needs to know whether the victim is a child or not. According to the section 2(d) of the POCSO Act, any person below 18 years can be said to be a child. Parents are the best persons who know actual age of their child. PW-2 is the mother of the victim. According to her at the time of occurrence, the victim was 16 years old. PW-1

and PW-3 are neighbourers of the informant who have categorically have stated in their evidence that the victim was about 16 years old at the time of occurrence. The victim herself supporting evidence of PW-1 to PW-3 has stated that at the time of occurrence, she was 16 years. PW-6 is the medical officer whose evidence also shows that at the time of occurrence, the victim was below 18 years (15 to 16). Ext-1 is seizure list by which Admit Card of HSLC and Birth Certificate of the victim were seized. The birth certificate marked as Ext-5 and HSLC Admit Card marked as Ext-6 of the victim shows that her date of birth is 14-01-2002. In view of the discussion made above it can be held that at the time of occurrence the victim was about 16 years old without any doubt. Hence it can be said that the victim was child at the time of occurrence.

- 15. PW-1 and PW-2 have categorically stated in the deposition that the police recovered the victim child from the possession of the accused person. PW-7 is the investigating officer who has clearly stated that he recovered the victim and the accused from house of one Rubul Boro. PW-5 is the victim who is the most vital witness. Her evidence indicates that on the night of 30-04-2018 the police recovered her along with the accused from the house belonging to his uncle. Similarly evidence of the informant shows that the victim was recovered from the house belonging to uncle of the accused along with him. The version of the defence as reflected is that the victim herself fled away with the accused person on her sweet will.
- 16. Ext-2 is the written ejahar which was lodged on 30-04-2018 at 8-30 PM. From the case diary it appears that statement of the victim was recorded on 01-05-2018 and

the accused was shown arrested on 01-05-2018 at 4-30 PM. There is a contradiction date and time of recovery of the victim. There is no dispute that the victim was recovered from the possession of the accused. From the cross-examination of the investigating officer it appears that the victim fled away with the accused on her sweet will. As I have already come to conclusion that at the time of occurrence, the victim was minor, her consent is immaterial. There is no evidence on record showing that the accused took away the victim with consent of her legal guardian.

- 17. From the evidence of the victim it appears also that the accused forcibly made sexual intercourse with her in the house of his uncle named Rubul Boro situated at Dasingimari for one time. During investigation after recovery, the victim was got medically examined. Ext-3 is the medical report which shows that there was evidence of absence hymen and that there was presence of evidence of sexual intercourse. The statement of the victim was got recorded under section 164 of the CrPC. The said statement was got marked also as Ext-3. It shows that a love affair was developed between the victim and the accused and that out of love the victim fled away with the accused person. It also shows that between them, physical sexual relation took place. It is the established principle that minor consent is regarded as no consent.
- 18.It is a case of aggravated penetrative sexual assault. Before knowing about aggravated sexual assault we must know first about penetrative sexual assault. It is defined under section 3 of the POCSO Act which reads thus:-"3. Penetrative sexual assault.-A person is said to commit "penetrative sexual assault" if-a. he penetrates his penis, to any extent, into the vagina, mouth, urethra or

anus of a child or makes the child to do so with him or any other person; or b. he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or c. he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or d. he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

- 19.**4**.Punishment for penetrative sexual assault. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine
- 20. In view of the discussion made above I find that the prosecution has succeeded in establishing its case under sections 363 of the IPC/4 of the POCSO Act against the accused person.

ORDER

- 21. In the result, I find the accused person guilty under sections 363 of the IPC/ 4 of the POCSO Act and accordingly he is convicted.
- 22. On the point of sentence, the accused is heard and to that effect, his statement was recorded.
- 23. It has been contended by the learned lawyer appearing on behalf of the accused person that the accused person is a just grown young man and his colorful life is waiting a head and that his entire colorful life will be jeopardized if he is put into bar for a period prescribed under section 4 of the POCSO Act. She has further submitted that for the reasons stated above, the court may extend leniency in

sentencing the accused person. On the other hand, the learned Public Prosecutor refuting the submissions advanced by the learned defence counsel, has submitted that the POCSO Act has been brought with some specific objects and as such the accused is needed to be punished as prescribed by law.

24. Regarding object of the POCSO Act, the Hon'ble Apex has observed in case of *Eera v. State (NCT of Delhi)* reported in "(2017) 15 SCC 133" thus :- "20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and wellbeing are regarded as being of paramount importance at every stage to ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not and their childhood abused is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act."

- 25. In Surjit Singh Vs. Nahara Ram and others (2004)6 SCC 513=AIR 2004 SC 4122 it was held "The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly there is a cross-cultural conflict where living law must find answer to new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, laws as a corner stone of the edifice of 'order' should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public system in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc."
- 26. Taking all aspects into consideration I do hereby order the accused Akash Mech to suffier RI of 6(Six) months for the section 363 IPC and to suffer RI of 7 years and to pay fine of Rs. 2000/- i/d SI of 6(Six) months for the Section 4 of the

POCSO Act. Set off his earlier detention period. Let a certified copy of this Judgment and order be supplied to the accused person at free of cost. Let a copy of the Judgment and Order be sent to the District Magistrate, Karbi Anglong, Diphu in terms of section 365 of the CrPC.

- 27. Taking all aspects into consideration I do hereby recommend an appropriate compensation to be awarded by the DLSA, Karbi Anglong, Diphu under Victim Compensation Scheme laid down in the section 357 A of the CrPC. Accordingly DLSA, Karbi Anglong, Diphu is asked to take steps accordingly. Let a copy of this Judgment and order be sent to Secretary DLSA, Karbi Anglong, Diphu. Accordingly this case is disposed of on contest.
- 28. Given under hand and seal of this court today, this the 21st day January, 2018.

Dictated and corrected by me.

Special Judge,

Special

Judge,

Karbi Anglong, Diphu.

Karbi Anglong,

Diphu.

Dictation taken and transcribed by me.

Stenographer Grade-I.

<u>APPENDIX</u>

Prosecution witnesses:

PW-1 = Shri Roti Sarkar

PW-2 = Smt. Ujjal Das Sarkar

PW-3 = Shri Lakhindra Das

PW-4 =Smt. Junu Junu Gogoi

PW-5 = Miss Priya Sarkar

PW-6 = Dr. Karik Kropi

PW-7 = Sri. Podmeshwar Saut

Defence witnesses: Nil.

Prosecution exhibits:

Ext-1 = Search and Seizure Memo

Ext-2 = Written Ejahar

Ext-3 = Medical Report

Ext-4 = Sketch Map of PO.

Ext-5 = Birth Certificate

Ext-6 = HSLC Admit Card

Ext-7 = Prayer of the IO for adding Section 4 of

POCSO Act.

Special Judge, Karbi Anglong, Diphu.