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. 07/2016 corresponding to GR Case No. 382/2016 & Dokmoka Police Station Case No. 31/2016 Under sections 363/34 of the IPC/ 6 of the POCSO Act.

State of Assam

Versus

Shri Dingjon Timung @ Ranjan Timung and others

Name of informant/complainant:

Shri Hemari Kro

Son of Sri Habe Kro

Village: Men Taro Gaon, Bhelughat

P.S: Dokmoka

District: Karbi Anglong

Name of the accused persons facing trial:

1. Shri Dingjon Timung alias Ranjan

Timung

S/O Late Longsing Timung

Village: Kuthepi West Karbi Anglong

P.S: Baithalangso District: Karbi Anglong

2. Shri Rupson Rongphar S/O Shri Babu Rongphar

Village: Mentaro Gaon, Bhelughat

P.S: Dokmoka

District: Kari Anglong

Advocates appeared:

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

For the defence : Mr R. S. Hanse. Argument heard on : 11.07.2019.

Judgment delivered on : 19.07.2019/ 31.07.2019

J U D G M E N T

1. It is a case of kidnapping and aggravated penetrative sexual assault alleged to have been committed by the accused persons.

The prosecution case in brief is that on 2. 05.05.2016, the informant-Shri Hemari Kro lodged a written ejahar with Dokmoka Police Station stating inter alia that on the night of 21.04.2016, the accused-Shri Ranjan Timung alias Dingjon Timung abducted his victim daughter who was a student of class-VII from their residence. The accused was accompanied by his friends, Shri Robising Rongphar and Shri Rupson Rongphar. From that date, his daughter was kept in unknown place and he could not make contact with his victim daughter. On 25.04.2016, the accused-Ranjan Timung was caught by the villagers and handed over to police. On receipt of the written ejahar, O/C of Dokmoka Police Station registered a criminal case vide Dokmoka Police Station Case No. 31/2016 under section 366-A/376(2) (i) of IPC read with section 8 of the POCSO Act and started investigation. On completion of investigation, charge-sheet was submitted under the registered sections of law against the accused persons Dingjon Timung @ Ranjan Timung, Sri Rupson Rongphar and Rabi Sing Rongphar showing the accused Rabi Sing Rongphar as absconder. Trial was started after split of the case of the accused Rabi Sing Rongphar. Hence

the prosecution case has come against the accused persons facing trial.

- 3. On completion of appearance of accused persons facing trial, copy was furnished to them. Having gone through the submissions duly advanced by the learned lawyers of both sides as well as case diary, I found that there was ground for presuming that the accused persons facing trial committed the offence under sections 363/34 of IPC and that the accused Dingjon Timung @ Ranjan committed the offence section 6 of the POCSO Act and accordingly the charges were framed. The particulars of the charged offence was duly read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. During trial the prosecution has examined as many as 8 (eight) witnesses. Statements of accused persons under section 313 of CrPC were recorded. Defence has examined none. Plea of defence is of total denial.

5. **Points for determination are :**

(i) Whether both the accused persons on 21.04.2016 at night at Mentaro Gaon under Dokmoka Police Station in furtherance of their common intention kidnapped the victim having age of 14 years without the consent of her lawful guardianship and that they thereby committed an offence punishable under section 363/34 of the IPC?

(ii) Whether the accused, Shri Dingjon Timung alias Ranjan Timung from 21.04.2016 to 24.04.2016 at nights and at the same place caused penetrative sexual assault upon the victim having age of 14 years and that he thereby committed the offence punishable under section 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. Learned counsel appearing on behalf of the accused persons has contended that the prosecution has miserably failed to prove its case against the accused persons beyond all reasonable 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 persons 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 Hemari Kro who is the informant. He has stated in his deposition that he knows the accused persons and the victim is his daughter. The occurrence took place about three years ago. On the night of occurrence, Robising Rongphar forcibly abducted his victim daughter from his house. At that time, as they were ill, they could not do anything. Thereafter, the accused-Rabi Sing Rongphar handed over the victim girl to accused, Ranjan Timung. He

does not know the address of the accused, Ranjan. After one week of the occurrence, their village boys apprehended the accused and recovered the victim girl. The victim girl and the accused were recovered from the house of the accused, Rupson. At the time of occurrence, the victim girl was 14 years old and she was reading in class-VII at Dokmoka School. Police got the victim girl medically examined and recorded her statement in the Court. Ext.1 is the ejahar and Ext.1(1) is his signature.

8. PW-2 is the victim who has deposed in her testimony that the informant is his father. She knows the accused, Ranjan Timung alias Dingjong Timung and Rupson Rongphar. At the time of her deposition, she was 16 years old. In a night, the accused-Robi Sing Rongphar and Dingjong Timung came to their house. At that time, her parents and sister were in the house. They served meal to them as they were guest and at about 12 midnight, the accused persons went back from their house. On that night at about 1 AM, the accused-Dingjong Timung again came to their house. In fear, she went to the house of her sister. As he did not find her, he went back. She came to know that on the next day morning, the accused came to their house and he left their house as he did not find her. Since then, the accused-Dingjong Timung followed her and used to threaten that if she does not elope with him, he would kill her parents. Being frightened, she came along with the accused, Dingjong Timung. He kept her in the house of Rupson Rongphar for one night. At that time, neither the accused-Dingjon Timung nor Rupson did physical contact with her. In the night, her brother, Robison

Rongpi came to the house Rupson Rongphar and assaulted the accused, Dingjong Timung. Then her brother and villagers brought the accused, Dingjong Timung to Dokmoka Police Station. Police got her medically examined and her statement recorded. Ext.2 is her statement and Ext.2(1), 2(2), 2(3), 2(4) and 2(5) are her signatures.

- 9. PW-3 is Dr Karik Kropi who has deposed in her testimony that on 05.5.2016 while she was attached at Diphu Civil Hospital she examined the victim in connection with Dokmoka PS Case 31 of 2016. On examination, she found hymen absent. As per X-ray report, her age was below 18 years and spermatozoa was not found. According to her opinion, the alleged history of sexual intercourse was present. No external injury mark was detected. Ext.3 is the medical report and Ext.3(1) is her signature.
- 10. PW-4 is Shri Gedion Rongphar who has stated in his evidence that he knows the informant and the victim. He also knows the accused persons except the accused, Denja Timung. The incident occurred about three years back. At the time of occurrence, police recorded the statement of the mother of the victim, Mirbon. But as the mother of Mirbon did not know Assamese language, he translated her version into Assamese. At that time, he came to know that it was an incident relating to girl.
- 11. PW-5 is Shri Kensing Rongphar who has stated in his evidence that he knows the informant, the accused persons and the victim girl. At the time of incident, he was VDP Secretary and his village people

informed him that the accused, Dingjong Timung in the name of extremist collected money in the village and showing love affair with the victim, he made physical contact illegally with her. He was informed by the village boys that they apprehended the accused Dingjong Timung alias Ranjan and handed him over to Army personnel. Knowing this information, he went to the police station and informed the matter of apprehension and handing over the accused to Army because he presumed that as the accused Dingjong Timung was a member of extremist group, people of their village might be harassed by the extremists. Later, the villagers also apprehended the other accused person facing trial.

- 12. PW-6 is Shri Phibison Kro who has deposed that he knows the informant, accused-Rupson Rongphar and other accused persons along with the victim girl. This incident took place in the year 2016. At the time of occurrence, the accused, Dingjong Timung alias Ranjan created panic by illegally collecting money in the name of extremist in Bheloghat area. By that time, the said accused in pretext of love affair with the victim forcibly took her and kept in a house of other person of their village. He also heard that the accused, Dingjan raped the victim. Thereafter, the villagers apprehended the accused Dingjan and handed over him to the Army. Police brought the accused from the custody of the Army. He could not say as to why the other accused Rupson was arrested by the police.
- 13. PW-7 is Shri Mohon Nath who at the time of occurrence was working as an ASI at Dokmoka Police

Station. On receipt of the FIR from the informant, the then O/C endorsed him to investigate the case. During his investigation, he recorded the statements of the victim, her mother and the informant. He got the victim medically examined and recorded her statement in Diphu Court. As the accused persons were already in jail, he made them shown-arrest and prayed for police custody in the Court. The Court accorded his prayer. During investigation, he went to the place of occurrence and recorded the statements of the witnesses available there. He drew a sketch map. Ext.4 is the sketch map and Ext.4(1) is his signature. On completion of his investigation, he found sufficient materials under sections 366-A/376(2)(i) of IPC and 8 of the POCSO Act against the accused persons and accordingly, he submitted charge-sheet under the said sections of law against them showing the accused Robising absconder. Ext.5 is the charge-sheet and Ext.5(1) is his signature.

- 14. PW-8 is Mrs Basapi Singnarpi who has deposed in his deposition that the informant is her husband and the victim is her daughter. She also knows the accused persons. She cannot recollect the date of the occurrence as she was ill at that time. As she was suffering from illness, she was unable to say as to who took the victim, although she could learn that somebody took her victim daughter. After two days of the occurrence, the victim girl was recovered.
- 15. First let us discuss whether the victim was child at the time of occurrence. The "child" is defined in the section 2(d) of the POCSO Act. According to the said section, a person who has not completed 18

years is a child. PW-7 is the investigating officer whose evidence is totally silent that any documents regarding proof of age of the victim. PW-3 is the medical officer who has stated in her testimony that on examination of the victim on 05.05.2016 she found the victim to be below 18 years. The defence has not disputed the said evidence of PW-3 during cross-examining her.

16. PW-1 is the father of the victim. According to him at the time of occurrence the victim was 14 years old and was reading in class VIII. PW-2 is the victim whose evidence shows that at the time of occurrence she was 14 years old. As there is a corroborative evidence that at the time of occurrence the victim was 14 years old and the defence has not disputed the age of the victim as stated above during their cross examination I am convinced to hold that at the time of occurrence the victim was 14/15 years old. According to PW-1 on the night of occurrence accused Rabi Sing Rongphar came to their house and forcibly took away the victim from their house. Later on the accused Rabi Sing Rongphar handed over the victim to the accused Ranjan Timung @ Dingjan Timung. PW-4 is the person who helped the Police in translating the statement given by the informant in Karbi language into Assamese. PW-5 is the VDP Secretary who has stated that the villagers informed him that the accused Dingjan Timung in pretext of having love affairs with the victim make foul work with her. PW-6 stated that he heard that the accused in pretext of having love affairs with the victim enticed away her from their house and kept in the house of one person and that he raped her. PW-8 is

the mother of the victim whose evidence is silent that the accused persons took away the victim.

- 17. The facts of the case remains that the victim was under custody of the accused persons for few days and as such she is considered to be a most vital and material witness. Her evidence clearly shows that the accused persons Dingjan Timung and Rabi Sing Rongphar came to their house on a night and stayed there as a guest. Since then the accused Dingjan Timung started harassing and threatening her. The accused Dingjan Timung threatened her that if she was not ready to flee away with him he would kill her parents. Out of fear she fled away with the accused Dingjan Timung. The accused Dingjan Timung kept her in the house of the accused Rupson Rongphar. Her evidence also shows that on the same night her brother assaulted the accused persons facing trial and later on she was recovered there from. I find no way to disbelieve the evidence of PW-1 and PW-2 regarding kidnapped of the victim marked as PW-2.
- 18. Evidence of the victim clearly shows that the accused persons facing trial did not commit any sexual assault or harassment towards the victim. On 06.05.2016 the accused persons Rupson Rongphar and Dingjam Timung @ Ranjan Timung were forwarded to the Judicial Custody and the accused Rupson Rongphar was released on bail on 20.09.2017.

- 19. In the result, I find the accused persons Sri Rupson Rongphar and Sri Dingjam Timung @ Ranjan Timung guilty under section 363 IPC and accordingly they are convicted.
- 20. On the point of sentence the accused person is heard and to that effect his statement is recorded. Both of the accused persons have prayed for leniency in sentencing them. There is no evidence on record showing that the accused persons were previously convicted by the Court of Law. Taking all aspects into consideration, I do hereby Order them to suffer RI of 1 year and to pay fine of Rs. 2000/- i/d SI for 2 months each. Set off their earlier detention period. Let certified copies of the Judgment and Order be supplied to the accused persons at free of cost. Also send a copy of the Judgment to the learned District Magistrate, Karbi Anglong, Diphu in terms of the section 365 of the CrPC.
- 21. Accordingly this case is disposed of on contest.
- 22. Given under my hand and seal of the Court on this 31st July, 2019 at Diphu, Karbi Anglong.

Dictated and Corrected by me.

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

(Md. A.U.Ahmed,

Special Judge Diphu, Karbi

APPENDIX

Prosecution Witnesses:

PW1- Shri Hemari Kro

PW2- Victim

PW3- Dr Karik Kropi

PW4- Shri Gedion Rongphar

PW5- Shri Kensing Rongphar

PW6- Shri Phibison Kro

PW7- Shri Mohon Nath

PW8- Mrs Basapi Singnarpi

Defence Witnesses: Nil

Prosecution Exhibited:

Ext.1- Ejahar

Ext.2- Statement of the victim

Ext.3- Medical report

Ext.4- Sketch map

Ext.5- Charge Sheet

Defence Exhibited: Nil

Special Judge Diphu, Karbi Anglong, Assam