## IN THE COURT OF THE SPECIAL JUDGE: ::::::::GOLAGHAT

## SPECIAL POCSO CASE NO.33/2019.

U/S 366/312 of IPC r.w.6 of POCSO Act. (Arising out of Golaghat P.S. case No.246/19)

State

-VS-

Md. Miraj Ali.

..... Accused person.

Present: Sri K. Hazarika, AJS,

Special Judge,

Golaghat.

### Appearance :-

For the State : Mr. P. Bora, Special P.P. For the accused : Mr. J. Bhuyan, Advocate.

Date of Argument : 16.11.19.

Date of Judgment : 16.11.19.

### JUDGMENT

1. The prosecution case in a nutshell is that on 27.02.19, one Smt. Rita Gowala lodged an ejahar in Numaligarh police outpost stating interalia that on 23.02.19, at about 5 pm, her minor daughter(victim), aged about 16 years, was missing from the house and later, after enquiry they came to know that accused Miraj Ali had taken away her said daughter.

- On receipt of the FIR, the Officer-in-charge of Golaghat P.S. registered a
  case being Golaghat P.S. case No.246/19 U/s 366 IPC and endorsed ASI Ritu Kr.
  Borah to investigate into the case. After completion of investigation, police
  submitted charge sheet against the accused person U/S 366/376(2)(i)/312 IPC r/w
  Section of 4 of the POCSO Act.
- 3. When the accused person appeared before the Court, necessary copies were furnished to him and after hearing both the sides, charge U/S 366/312 IPC read with Section 6 of the POCSO Act was framed against the accused Miraj Ali which was read over and explained to him to which he pleaded not guilty and claimed to be tried. Thereafter, the trial commenced.

#### **POINTS FOR DETERMINATION:**

- (i) Whether the accused person on 23.02.19, at about 5 pm, at Letekuchapori gaon under Golaghat P.S., kidnapped the victim, the minor daughter of the informant with intent that she may be compelled to marry against her own will or in order that she will be forced or seduced to illicit intercourse and thereby committed by an offence punishable u/s 366 of IPC?
- (ii) Whether the accused person on the aforesaid date, time and place voluntarily caused the victim, then being with child, to miscarry, such miscarriage not being caused by him in good faith for the purpose of saving the life of the victim and thereby committed an offence punishable u/s 312 IPC?
- (iii) Whether the accused person committed aggravated penetrative sexual assault on the victim, the minor daughter of the informant and thereby committed an offence punishable u/s 6 of the POCSO Act?

4. To bring home the charge against the accused person, prosecution side examined as many as 5(five) witnesses in the case and they are as follows:-

(i) Smti. Rita Guwala(informant/mother of victim) - PW1.

(ii) Victim - PW2.

(iii) Sri Nandu Rajpur(younger brother of informant) - PW3.

(iv) Sri Mukesh Karmakar - PW4.

(v) Smti. Moneswari Rajput(sister-in-law of informant) - PW5.

- 5. The defence plea is of total denial. The defence did not adduce any evidence. The accused person was not examined U/S 313 Cr.P.C. as there was no incriminating evidence against him.
- 6. I have heard arguments of the learned counsels for both the sides. I have also gone through the entire evidence on record.
- 7. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.

### **DISCUSSION, DECISION AND REASONS THEREOF:**

8. PW1(informant/mother of victim) stated in her examination-in-chief that about 8 months back, one day, when her daughter(victim) did not return home from school, she searched for her and as she could not be traced out, she lodged an ejahar in Numaligarh police outpost regarding missing of the victim and later, she came to know that her daughter(victim) went to her mother's house without informing her and she brought her back to her house. PW1 also deposed that at the time of occurrence, the age of the victim was 16 years.

- 9. PW2(victim) stated in her examination-in-chief that about 8 months back, one day, when she went to the house of her grandmother from school without informing her mother, Rita Guwala, her mother lodged an ejahar in the police station as she could not trace her out and later, her mother came to know that she went to her grandmother's house. PW2 also stated that at the time of occurrence, her age was 18 years.
- 10. PW3(younger brother of informant), PW4 and PW5 (sister-in-law of informant) stated in their examination-in-chief that they did not know anything about the occurrence.
- From the aforesaid evidence on record it transpires that none of the 11. witnesses including the informant and the victim had implicated the accused person with the alleged occurrence as stated in the ejahar. P.W.1 being the informant only testified about the victim not returning home from school and after searching for her as the victim could not be traced out, PW1 lodged an ejahar in Numaligarh police outpost regarding missing of the victim and later on, she came to know that her daughter(victim) went to her mother's house without informing her. PW2 being the victim testified about going to her grandmother's house from school without informing her mother(PW1). The other witnesses of this case i.e. PW3, PW4 and PW5 expressed their ignorance about the alleged occurrence in their evidence. Thus, it is seen that the victim on her own will went to her grandmother's house i.e. to the house of the mother of the informant without informing her mother(PW1) and so, PW1 lodged the ejahar as she was unable to trace PW2(Victim). Besides that, the independent witnesses PW3, PW4 and PW5 expressed their ignorance about the alleged occurrence. Though PW1 had testified in her evidence that the age of the victim was 16 years at the time of occurrence but the said fact was contradicted by victim(PW2) herself when she stated in her evidence that at the time of occurrence, she was 18 years old. Prosecution could not produce any birth certificate or school certificate to prove that the victim was a minor girl at the time of occurrence. So, taking into consideration the evidence of the victim, she is held to be major at the time of occurrence. The victim being major at the time of occurrence, no offence under the POCSO Act is attracted in

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this case. Moreover, considering the evidence on record, no offence can be

attributed to the accused as alleged in the ejahar.

12. In view of the above discussions and reasons, I find and hold that

prosecution could not establish the charges U/S 366/312 IPC r/w Section 6 of the

POCSO Act against the accused person. As such, accused Miraj Ali is acquitted and

set at liberty. The bail bond of the accused person shall remain in force for a

period of 6 months from today.

13. Return the seized school certificate of the victim to her mother(informant)

after due verification in accordance with law.

14. Given under my hand and seal of this Court on this 16<sup>th</sup> day of November,

2019.

Dictated & corrected by me:

(K. Hazarika)

Special Judge, Golaghat

(K. Hazarika)

Special Judge,

Golaghat

# **APPENDIX**

Prosecution witnesses :-
PW1- Smti. Rita Guwala(informant/mother of victim)
PW2- Victim,
PW3- Sri Nandu Rajput (younger brother of the victim)
PW4- Sri Mukesh Karmakar,
PW5- Smti. Moneswari Rajput(sister-in-law of informant).
<u>Defence witness</u> :-
Nil
Documents Exhibited by Prosecution :-
Nil.
Material Exhibited by Prosecution :-
Nil.
<u>Defence Exhibit</u> :-
Nil.
(K. Hazarika)
Special Judge,
Golaghat.