### 

## SPECIAL POCSO CASE NO.60/2019.

U/S 366 IPC r/w Section 4 of the POCSO Act. (Arising out of Dergaon P.S. case No.271/19)

State

-VS-

Sri Pankaj Sahu.

..... Accused.

Present: Sri K. Hazarika, AJS,

Special Judge, Golaghat.

## **Appearance** :-

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

Argument heard on : 15.11.19.

Judgment delivered on : 15.11.19.

### J U D G M E N T

1. The prosecution case in nutshell is that on 19.04.19, one Hari Prasad lodged an ejahar in Dergaon PS stating inter alia that about 7 months back, accused Pankaj Sahu had established relationship with his minor daughter of 15 years old(victim) as his sister and later, took her to Guwahati promising to marry her and later, the said accused took her to his house and had physical relationship with her without giving her the status of a wife and often used to torture her mentally and physically.

2. On receipt of the ejahar, the O/C of Dergaon P.S., Prasanna Kr. Sarmah registered a case being Dergaon P.S. Case No.271/19 U/S 366/376(2)(i) IPC r/w Section 4 of the POCSO Act, 2012 and took up the investigation of the case himself. After completion of investigation, police submitted charge sheet against the accused person U/S 366/343/376 IPC read with Section 4 of the POCSO Act, 2012.

P.T.O.

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 IPC read with Section 4 of the POCSO Act was framed against the accused person 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 one day, prior to 7 months of lodging of the ejahar on 19.04.19 kidnapped the victim, a minor girl 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 an offence 366 IPC ?
- (ii) Whether the accused person on the aforesaid date and thereafter committed penetrative sexual assault on the victim, a minor girl and thereby committed an offence punishable U/S 4 of the POCSO Act ?

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

4. To bring home the charge the prosecution side examined as many as 4(four) witnesses and they are as follows:-

(i) Sri Hari Prasad(informant/father of victim) --PW1,

(ii) Victim --PW2,

(iii) Smti. Jayanti Sahu --PW3,

(iv) Smti. Kaushalya Devi --PW4.

- 5. The defence plea is of total denial. The defence did not adduce any evidence in the case. The accused was not examined U/S 313 Cr.P.C. as there was no incriminating evidence against him.
- 6. I have heard the 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 charge against the accused person.

P.T.O.

- 8. P.W.1(informant/father of victim) stated in his examination-in-chief that about 2 years back, his daughter(victim) got married with the accused person and started living together as husband and wife in the house of the accused person and about 6/7 months back, one day, there was an altercation between his daughter(victim) and the accused person and out of misunderstanding, he lodged an ejahar against the accused person at Dergaon P.S. and that at the time of occurrence, the age of the victim was 18 years. During cross-examination PW1 stated that except altercation, no other occurrence had taken place between his daughter (victim) and the accused person.
- 9. PW2(victim) stated in her examination-in-chief that about one year back, she got married with the accused person and after marriage, she started living with him as husband and wife and that about 5/6 months back, one day, there was an altercation between her and the accused person and out of misunderstanding, her father, Hari Prasad lodged an ejahar against the accused person in Dergaon P.S.

and that at the time of occurrence her age was 18 years. During cross-examination PW2 stated that except altercation, no other occurrence had taken place between her and the accused person.

- 10. PW3 stated in her examination-in-chief that due to misunderstanding, Hari Prasad had lodged an ejahar against the accused person.
- 11. P.W.4 stated in her examination-in-chief that she did not know anything about the occurrence.
- 12. From the aforesaid evidence on record, it transpires that none of the witnesses including the informant and the victim had implicated the accused person with the alleged occurrence as stated in the ejahar. PW1 and PW2 being the most vital witnesses of this case had testified in their evidence about an altercation that took place between PW2 and the accused person and nothing else. Both PW1(informant) and PW2(victim) deposed in their cross-examination that except altercation, no other occurrence had taken place between PW2 and the accused persons. Besides that, the other independent witness of this case, namely, PW3 deposed that due to misunderstanding Hari Prasad(PW1) lodged an ejahar against the accused person and PW4 expressed her ignorance about the alleged occurrence in her evidence. Thus, it is seen that none of the witnesses supported the prosecution case and the informant and the victim did not prove the contents of the ejahar.
- 13. In view of the above discussions and reasons, I find and hold that the prosecution could not establish the charges U/S 366 IPC read with Section 4 of the POCSO Act against the accused person. As such, accused Pankaj Sahu is acquitted and set at liberty forthwith. The bail bond of the accused person shall remain in force for a period of 6 months from today.

14. Given under my hand and seal of this Court on this 15<sup>th</sup> day of November, 2019.

Dictated & corrected by me:

(K. Hazarika)

(K. Hazarika) Special Judge, Golaghat.

Special Judge, Golaghat.

# **APPENDIX**

<u>Prosecution witnesses</u> :-	
PW1- Sri Hari Prasad.	
PW2-Victim.	
PW3- Smti. Jayanti Sahu,	
PW4- Smt. Kaushalaya Devi.	
<u>Defence witness</u> :-	
Nil	
<u>Documents Exhibited by Prosecution</u> :-	
Nil.	
Material Exhibited by Prosecution :-	
·	
Nil.	
Defence Exhibit :-	
Nil.	
	(K. Hazarika)
	Special Judge,
	Golaghat.