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

SPECIAL (POSCO) CASE NO.31/2018

U/S 376 of IPC R/W Sec.4 of POCSO Act.

(Arising out of Dergaon PS Case No.42/16)

State

-vs-

Sri Bhulku Karmakar @ Hulku

......Accused person.

<u>Present</u>: Sri K. Hazarika,AJS

Special Judge,

Golaghat.

<u> Appearance :-</u>

For the State : Mr.N. N. Hazarika, Addl. P.P.

For the accused: Mr. N. Dutta

Date of Argument : 25.07.19
Date of Judgment : 25.07.19

J U D G M E N T

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution is that one Durjudhan Bakti lodged an ejahar in Dergaon PS on 20.02.16 stating inter-alia that on 12.02.16 at about 6 PM, the accused person forcefully kidnapped his 15 years old daughter, i.e., the victim from his house.
- 2. On receipt of the FIR, the Officer-in-Charge, Dergaon PS registered a case being Dergaon PS Case No.42/16 U/S 366(A) IPC and endorsed SI Giridhar Bora to investigate into the case. After completion of

investigation, police submitted charge-sheet against the accused person u/s 366 IPC read with section 4 of 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 376 IPC read with section 4 of POCSO Act was framed against 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.

4. **POINTS FOR DETERMINATION**:

- (i) Whether the accused on 12.02.16 at about 6 PM at Borkathoni under Dergaon PS took the 15 years old daughter of the informant, i.e., the victim and kept her at Khumtai, i.e., his house, committed rape upon her as a result of which she became pregnant of 7 months and thereby committed an offence punishable u/s 376 IPC?
- (iii) Whether the accused on the aforesaid date, time and place committed penetrative sexual assault on the victim, the 15 years old daughter of the informant and thereby committed an offence punishable u/s 4 of POCSO Act?
- 6. To bring home the charge against the accused person, the prosecution side examined as many as 2two) witnesses and they are as follows:-
- (i) Sri Durjudhan Bakti (informant/father of the victim) -PW1
- (ii) Victim -PW2
- 7. The defence plea is of total denial. The defence did not adduce any evidence in this case. The accused person was not examined u/s 313 CrPC as there was no incriminating evidence against him.
- 8. I have heard the arguments of the learned counsels for both the sides. I have also gone through the entire evidence on record.

9. 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:

- 10. PW1(informant/father of the victim) stated in his examination-inchief that one day, in the year 2016, his daughter(victim) after an altercation with him went out of the house and out of misunderstanding, he lodged an ejahar in Dergaon PS. PW1 also stated that at the time of occurrence, the age of his daughter(victim) was 19 years. During cross-examination, PW1 stated that he did not know what was written in Ext.1 ejahar and that it was not read out to him before he signed it and that accused Bhulku Karmakar @ Hulku neither committed rape on his daughter(victim) nor committed penetrative sexual assault on her.
- 11. PW2 (victim) stated in her examination-in-chief that about three years back, one day, when she went out of the house after an altercation with her father, Durjudhan Bakti, out of misunderstanding, her father lodged an ejahar in Dergaon PS. PW2 also stated that at the time of occurrence, her age was 19 years. During cross-examination, PW2 stated that the accused person neither committed rape on her nor committed penetrative sexual assault on her.
- 12. From the aforesaid evidence on record, it transpires that both the witnesses including the informant and the victim did not implicate the accused person with the alleged occurrence as stated in the ejahar. PW1(informant/father of the victim) and PW2 (victim) themselves clearly stated in their evidence that at the time of occurrence, the age of the victim girl was 19 years. Thus, it has become clear that the victim was a major girl at the time of incident. The prosecution could not prove that the victim was a minor girl at the time of occurrence by adducing any sort of evidence, be it oral or documentary. As such, no offence under the POCSO Act is attracted in this case.

- 13. As regards the offence of rape, both the informant and the victim clearly deposed in their cross-examination that the accused person did not commit rape on the victim(PW2). Thus, the prosecution case was totally shattered by the victim and informant themselves.
- 13. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 376 IPC read with section 4 of POCSO Act against the accused person. As such, accused Bhulku Karmakar @ Hulku is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.
- 14. Given under my hand and seal of this Court on this 25^h day of **July**, 2019 at Golaghat.

Dictated & corrected by me, (K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)
Special Judge,
Golaghat.

APPENDIX

Prosecution witness:	
PW1 Dujurdhan Bakti (informant/father of the victim)	
PW2 Victim	
Defence witness:	
Nil	
Documents Exhibited by Prosecution :	
Ext.1 Ejahar.	
Ext.2 Statement recorded u/s 164 CrPC	
Material Exhibited by Prosecution :	
Nil.	
Defence Exhibit:	
Nil.	
(K. Hazarika	.)
Special Judg	e,
Golaghat.	