DISTRICT: GOLAGHAT.

HEADING OF JUDGMENT IN SPECIAL CASES:

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No. 1/2018.
Arising out of G.R. Case No.1985/2017.
U/S 4 of POCS Act.

Present :- Shri S. K. Sharma, Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Shri Biki Das. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. A.K. Sarmah,

Advocate, Golaghat.

Dates of evidence : 27.05.2019, 19.06.2019,

15.07.2019, 30.09.2019,

15.11.2019.

Date of argument : 04.03.2020.

Date of Judgment : 04.03.2020.

JUDGMENT:

- 1. The accused Shri Biki Das, son of Shri Dilip Das, resident of Rangamati, A.T. Road, under Degaon Police Station, District Golaghat, Assam, here in this case has been put to face the trial to answer the charge under section 4 of POCSO Act.
- 2. The fact as disclosed in the First Information Report is that on 30.10.2017, at about 4 P.M., in the evening, when the daughter of the informant, aged about 15 years went to the nearby shop of her house, then the accused person elopped the daughter of the informant.
- 3. On receipt of the ejahar from the informant Smti. Ami Rabidas, on 01.11.2017, the O/C of Dergaon Police Station registered the case being Dergaon P.S. Case No.708/2017, u/s 366 of IPC and endorsed S.I. Shri L. Bora to investigate the case. During investigation, the I.O. visited the place of occurrence and examined witnesses. The I.O. also recovered the victim girl and then got her examined by Doctor and collected the report. During investigation, the I.O. also got the statement of the victim recorded in the Court. During investigation, the I.O. arrested the accused person and forwarded him to the Court. Then on completion of investigation, the I.O. submitted charge sheet against the accused to stand trial in the Court u/s 366(A) of IPC, read with Section 4 of POCSO Act.
- 4. On appearance of the accused person before this court, and after hearing learned counsels of both the sides, my learned predecessor has framed charge against the accused u/s 4 of POCSO Act and the contents of the charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To bring home the charge against the accused, the prosecution side has examined as many as 6 witnesses including the M.O. and I.O. After closing the prosecution evidence, the statement of the accused person has been recorded under the provision of section 313 of Cr.P.C. The accused declined to adduce evidence in his

defence. The plea of the accused is total denial.

6. I have heard Mr. P. Bora, learned Special Public Prosecutor for the State and Mr. A.K. Sarmah, learned counsel for the accused.

NOW THE POINT FOR DETERMINATION IS -

7. Whether the accused on 30.10.2017, at Rangamati, under Dergaon Police Station, committed penetrative sexual assault upon the victim child; and thereby committed an offence punishable under Section 4 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

8. P.W.1 is the informant of this case, who deposed in her evidence that the occurrence took place about one year back. On the day of occurrence, at about 4 P.M., in the evening, her victim daughter was missing from her house. Thereafter, they searched for her victim daughter but could not find her out and thereafter, she lodged the ejahar. She put her thumb impression in the ejahar. Later on, the accused and the victim surrendered at Police Station. Ext-1 is the ejahar. P.W.1 also deposed that at the time of occurrence, the age of the victim was more than 18 years and she elopped with the accused at her own will. The victim also did not do any physical relationship with the victim.

In cross examination, P.W.1 has stated that she does not want to proceed further with the case. She has also no objection, if the accused is acquitted from this case.

9. P.W.2 is the victim girl, who deposed in her evidence that the occurrence took place about one year back. On the day of occurrence, in the evening, when she was returning home from the shop of Kaka Rabidas, then from the road, the accused took her to the house of her relative Lengra Rabidas situated at Missamara. There they stayed for about 10 days. Thereafter, her parents searched for her and when her parents could not find her out, then her mother lodged the ejahar

and thereafter, she and the accused surrendered at Police Station. Later on, the accused after releasing from the jail, again took her to the house of Lengra Rabidas and kept her there. P.W.2 also deposed that on the day of occurrence, the marriage between her and the accused was performed in the temple. The accused did not commit any physical relationship with her. P.W.2 further deposed that on the day of occurrence, she elopped with the accused at her own will. There was love affair between her and the accused. P.W.2 also deposed that she does not want to proceed further with the case. Police also got her examined by Doctor and also got her statement recorded in the Court. Ext-2 is her statement.

In cross examination, P.W.2 has stated that she did not submit her age proof certificate before the Court. When she gave her statement before the Court, the she disclosed her age as 18 years.

10. P.W.3 is the Medical Officer Dr. Mohan Saikia. His evidence reveals that on 14.11.2017, he was working at Swahid Kushal Konwar Civil Hospital, Golaghat as Specialist Gynecologist. On that day, he examined the victim girl, resident of village Rangamati, under Dergaon Police Station, District - Golaghat in connection with Dergaon P.S. Case No.708/2017, vide GOPD Registration No.2296 on being escorted and identified by WPC-371 Smti. Tutumoni Gogoi Bora and found the following -

Height :- 154 Cm.

Weight :- 44 Kg.

Teeth :- 15/15.

X-Ray vide No.2296 shows age was above 16 years and below 18

years.

After examination, the Doctor, P.W.3 has opined that the age of the girl was above 16 years and below 18 years. P.W.3 also deposed that opinion regarding the sign of recent sexual intercourse could not be given since the victim did not give her consent to examine. Accordingly, he issued Ext-3 the medical examination report and Ext-3(1) is his signature. Ext-4 is the report of Radiologist and Ext-4(1) is the signature of Dr. Vikash Sharma, Radiologist.

11. P.W. Shri Rajib Rabidas has deposed in his evidence that he knows

both the accused and the informant. But he does not know anything regarding the

occurrence.

12. P.W.5 Shri Umesh Rabidas has deposed in his evidence that The

occurrence took place about one year back. He went to the house of the informant

after coming to know that the accused elopped with the daughter of the informant.

Later on, the informant lodged the ejahar at Police Station.

In cross examination, P.W.5 has stated that he did not see the

occurrence.

13. P.W.6 Shri Biki Rabidas has deposed in his evidence that he knows

both the accused and the informant. But he does not know anything regarding the

occurrence.

14. Thus, from the evidence of the P.W.1 informant and

P.W.2 victim, it appears to be clearly a case of voluntary elopement

arising out of a love affair between the accused and victim, who is on

the verge of attaining majority. There is no element of inducement or

force and neither is any ingredients of penetrative sexual assault been

established. Hence, prosecution has not been able to establish its case

under Section 4 of POCSO Act. Consequently, accused Biki Das is

acquitted of the said offence and set at liberty forthwith. His bail bond

stands extended by further six months from today.

Given under my hand and seal of the Court on this the 4th day of

March, 2020.

(S. K. Sharma), Special Judge,

Golaghat.

Dictated & Corrected

by me.

Special Judge,

Golaghat.

APPENDIX:

WITNESSES FOR THE PROSECUTION:

- 1. P.W.1 Smti. Ami Rabidas.
- 2. P.W.2 The victim girl.
- 3. P.W.3 Dr. Mohen Saikia, M.O.
- 4. P.W.4 Shri Rajib Rabidas.
- 5. P.W.5 Shri Umesh Rabidas.
- 6. P.W.6 Shri Biki Rabidas.

WITNESSES FOR THE DEFENCE: Nil.

EXHIBITS FOR THE PROSECUTION:

- 1. Ext-1 Ejahar.
- 2. Ext-2 Statement of the victim recorded u/s 164 of Cr.P.C.
- 3. Ext-3 Medical examination report of the victim.
- 4. Ext-4 Report of Radiologist.

EXHIBITS FOR THE DEFENCEN: Nil.

Special Judge, Golaghat.