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

SPECIAL (POSCO) CASE NO.64/2019

U/S 4 of POCSO Act.

(Arising out of Golaghat PS Case No.548/19)

State -vs-Sri Ratul Das

......Accused person.

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

<u> Appearance :-</u>

For the State : Mr.P. Bora, Special P.P.

For the accused: Miss A. Nath

Date of Argument : 09.01.2020 Date of Judgment : 09.01.2020

J U D G M E N T

1. For the sake of skipping expatiation, the encapsulated version of the prosecution is that one Smti. Banti Newar lodged an ejahar in Golaghat PS on 20.05.19 stating inter-alia that on 13.05.19 at about 1 PM, her daughter(victim), aged about 16 years went missing and after vigorous search at about 8 PM, they got information that the accused person had kidnapped her daughter (victim) and when they asked to return back their daughter(victim), the accused person told that he would return the victim and so, they waited for it and when they did not get any informant, they

called over phone but did not get any reply and when her husband called over phone on 19.05.19, the accused person and his brothers, namely, Manjil Das, Ranjit Das and Nitul Das threatened to kill/cut them and to file a case if they liked.

- 2. On receipt of the FIR, the Officer-in-Charge, Golaghat PS registered a case being Golaghat PS Case No.548/19 U/S 366 IPC and endorsed SI Tribhuvan Saikia to investigate into case. After completion of investigation, police submitted charge-sheet against the accused Ratul Das u/s 366/376 IPC read with Sec. 6 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 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.

POINT FOR DETERMINATION:

Whether the accused person on 13.05.19 and thereafter committed penetrative sexual assault upon the victim, a minor girl of 16 years and thereby committed an offence punishable u/s 4 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

4. To bring home the charge against the accused person, the prosecution side examined as many as 6(six) witnesses and they are as follows:-

(i) Smti. Banti Newar(informant/mother of victim)	-PW1
(ii) Victim	-PW2
(iii)Sri Dilip Newar(husband of informant/ father of victim)	- PW3
(iv)Sri Chandan Dutta	- PW4
(v) Smti. Premeswari Das	- PW5

(vi) Sri Nitul Das - PW6

- 5. 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.
- 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 charges against the accused person.
- **8.** PW1(informant/mother of victim) stated in her examination-inchief that about 8 months back, one day, at about 1 PM, when her daughter(victim) did not return home and after vigorous search when they could not find her, she lodged an ejahar in Golaghat PS and later on, her said daughter(victim) returned home and told her that she went to one of her friends house. PW1 also stated that at the time of occurrence, the age of her daughter(victim) was 18 years.
- 9. PW2(victim) stated in her examination-in-chief that one day, in the month of May,2019, when she went to one of her friend's house without informing her parents, her mother, Banti Newar and her father searched for her and getting no trace of her, her mother lodged an ejahar in Golaghat PS and that at the time of occurrence, her age was 18 years. During cross-examination, PW2 stated that she had given her statement u/s 164 CrPC before the Magistrate as per the instructions of her mother.
- 10. PW3(father of victim) stated in his examination-in-chief that one day, in the month of May,2019, his wife, Banti Newar had lodged a case in Golaghat PS out of misunderstanding and that at the time of occurrence, the age of his daughter(victim) was 18 years.

- 11. PW4, PW5 and PW6 stated in their examination-in-chief that they did not know anything about the occurrence.
- 12. From the aforesaid evidence on record, it transpires that all 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/mother of the victim) testified in her evidence that when her daughter(victim) did not return home and after vigorous search when they could not find her, she lodged an ejahar in Golaghat PS and later on her said daughter (victim) returned home and told her that she went to one of her friend's house and PW2(victim) herself deposed in her evidence that when she went to one of her friends house without informing her parents, her mother(PW1) and her father searched for her and getting no trace of her, her mother lodged an ejahar in Golaghat PS. On the other hand, the father of the victim (PW3) also deposed about his wife(PW1) lodging a case in Golaghat PS out of misunderstanding and nothing else. PW1, PW2 and PW3 also stated that at the time of occurrence, the age of the victim girl was 18 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. The other independent witnesses examined by the prosecution, i.e., PW4, PW5 and PW6 expressed their ignorance about the alleged occurrence in their evidence. Thus, the witnesses did not support the prosecution story and the contents of the ejahar.
- 13. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge u/s 4 of POCSO Act against the accused person. As such, accused Ratul Das is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.

- 14. The seized birth certificate of the victim be returned from whom it was seized after due verification in accordance with law.
- 15. Given under my hand and seal of this Court on this 9th day of **January**, 2020 at Golaghat.

Dictated & corrected by me, (K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)
Special Judge,
Golaghat.

APPENDIX

Prosecution witness:
PW1 Smti. Banti Newar(informant/mother of victim)
PW2 Victim
PW3 Sri Dilip Newar(husband of informant/father of victim)
PW4 Sri Chandan Dutta
PW5 Smti. Premeswari Das
PW6 Sri Nitul Das
<u>Defence witness:</u>
Nil
Documents Exhibited by Prosecution:
Ext.1 Ejahar
Ext.2 Statement recorded u/s 164 CrPC
Material Exhibited by Prosecution:
Nil.
<u>Defence Exhibit</u> :
Nil.
(K. Hazarika)

Special Judge,

Golaghat.