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

SPECIAL(POCSO) CASE NO.36/2018

U/S 366/366A of IPC R/W Sec.8 of POCSO Act (Arising out of Dergaon PS Case No.196/17)

State

-vs-

- 1. Md. Abidur Rahman
- 2. Md. Jelili Ali @ Jelilotddin

......Accused persons.

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

<u> Appearnace :-</u>

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

For the accused : Mr. J.K. Goswami

Md. S.A.M. Hussain

Date of argument : 12.06.19 Date of Judgment : 12.06.19

<u> I U D G M E N T</u>

1. The prosecution case in brief is that on 12.04.17, one Momina Begum lodged an ejahar in Dergaon PS stating inter-alia that on that day, at about 6 PM, when her 16 years old

daughter(victim) was going to the house of her paternal aunty, the accused persons along with some other unknown youths forcefully took her in the Scorpio vehicle bearing No.AS03 M/3627 from the road and kidnapped her.

- 2. On receipt of the ejahar, police registered a case being Dergaon PS Case No. 196/17 U/S 366 of IPC and entrusted ASI N. Phukan to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused persons u/s 366 of IPC read with section 8 of POCSO Act, 2012.
- 3. After the accused persons appeared before the court, necessary copies were furnished to them and after hearing both the sides, charges u/s 366 IPC read with section 8 of POCSO Act was framed against accused, Jelil Ali @ Jelilotddin and charge u/s 366A IPC was framed against accused Abidur Rahman which was read over and explained to them to which they pleaded not guilty and claimed to be tried. Thereafter, the trial commenced.

POINTS FOR DERMINATION:

4. (i) Whether accused Jelil Ali @ Jelilotddin on 12.04.17, at about 6 PM at Pachim Batipora gaon under Dergaon PS kidnapped the 16 years old victim in a Scorpio vehicle bearing No.AS03M/3627 from the road 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 punishable u/s 366 IPC?

- (ii) Whether accused Jelil Ali @ Jelilotddin on the aforesaid date, time and place took the aforesaid victim in the Scorpio vehicle bearing No.AS03M/3627 with sexual intent which involved physical contact without penetration and sexual intercourse with her and thereby committed an offence punishable u/s 8 of POCSO Act?
- (ii) Whether accused Abidur Rahman on the aforesaid date, time and place induced the 16 years old victim to go from the road with intent that she may be or knowing that it is likely that she will be forced to illicit intercourse by the accused and thereby committed an offence punishable u/s 366A IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

- 5. To bring home the charges against the accused person, the prosecution examined only two witnesses, namely, the following witnesses in this case.
- (i) Musstt. Momina Begum (informant/ mother of the victim) PW1
- (ii) Victim PW2
- 6. The defence plea is of total denial. The defence did not adduce any evidence in this case. The accused persons were not examined u/s 313 CrPC as there was no incriminating evidence against them.
- 7. I have heard the arguments advanced by the learned counsels for both the sides.

- 8. At the very outset, I would like to scrutinies the evidence on record for the purpose of adjudicating the charges against the accused persons.
- 9. PW1(informant/mother of the victim) stated in her examination-in-chief that about 2 years back, in the month of 'Bohag', one day, when she found her daughter(victim) missing from the house, she lodged an ejahar against the accused persons suspecting that they had kidnapped her said daughter and that on the next day, her daughter(victim) returned home and told her that she had gone to her paternal aunti's house. PW1 also stated that at the time of the occurrence, her daughter(victim) was 18 years old. During cross-examination, PW1 stated that the accused persons were not involved in the occurrence and that the accused persons did not kidnap her daughter(victim).
- 10. PW2 (victim) stated in her examination-in-chief that about 2 years back, in the month of 'Bohag', one day, when she had gone to her paternal anuti's house without informing her mother, her mother lodged an ejahar agianst the accused persons suspecting that they had kidnapped her and that on the next day, she returned home and told her mother that she had gone to her paternal aunti's house. PW2 also stated that at the time of the occurrence, her age was 18 years. During cross-examination, PW2 stated that the accused persons were not involved in the occurrence and that the accused persons did not kidnap her on the day of occurrence.

- 11. From the aforesaid evidence on record, it appears that both the witnesses, namely, PW1(informant/mother of the victim) and PW2(victim) had clearly stated in their evidence that the victim was about 18 years old at the time of occurrence and thus the victim was major at the time of the incident. The prosecution also failed to show that the victim was a minor at the time of occurrence. As such, no offence under POCSO Act is attracted in this case.
- 12. Regarding the alleged offence of kidnapping by the accused persons, the victim (PW2) herself admitted in her evidence that on the day of occurrence, she went to her paternal aunti's house without informing her mother and her mother lodged an ejahar against the accused persons suspecting that they had kidnapped her. PW2 clearly stated her cross-examination that the accused persons were not involved in the occurrence and that the accused persons did not kidnap her on the day of occurrence. Even the informant(mother of the victim), i.e., PW1 stated in her crossexamination that on the day of the occurrence her daughter(victim) returned home and told her that she had gone to her paternal aunti's house. PW1 also stated in her cross-examination that the accused persons were not involved in the occurrence and they did not kidnap her daughter(victim). Thus, it is seen that the vital witnesses of the case did not support the prosecution story.
- 13. In view of the aforesaid discussion and reasons, I find and hold that the prosecution could not establish the charges u/s 366/366A of IPC and Section 8 of POCSO Act against the accused persons. As such, accused Abidur Rahman and Jelil Ali @

Jelilotddin are acquitted and set at liberty forthwith. Their bail bonds shall remain in force for a period of six months from today.

14. Given under my hand and seal of this Court on this 12th day of June, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

Prosecution witness:
PW1 -Musstt. Momina Begum(informant/mother of the victim)
PW2 – Victim
<u>Defence witness:</u>
Nil
Documents Exhibited by Prosecution:
Ext.l – Ejahar
Ext.2 – Statement of victim recorded u/s 164 of Cr.P.C.
Material Exhibited by Prosecution:
Nil.
<u>Defence Exhibit</u> :
Nil.
(K. Hazarika)
Special Judge,

Golaghat.