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

## SPECIAL(POCSO) CASE NO.35/2018

U/S 363 of IPC R/W Sec.4 of POCSO Act
(Arising out of Dergaon PS Case No.163/18)

State

-vs-

Bablu Ghatowar @ Babul......Accused.

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

Golaghat.

### Appearnace :-

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

For the accused: Mr. D. Dutta, Ld. Advocate.

Date of argument : 01.04.19
Date of Judgment : 01.04.19

#### J U D G M E N T

1. The prosecution case in brief is that on 27.03.18, one Swaraj Ghatowar lodged an ejahar in Dergaon PS stating inter-alia that on 10.03.18 when there was no one in her house, accused Bablu Ghatowar came to her house and forcefully took her 17 years old daughter (victim) and when they were searching for her on that

day, she came to know from reliable source that the accused person had concealed her said daughter in a house situated at Moubandha in the district of Jorhat and Bhutku Ghatowar came back with his son and kept her daughter in the house of her son-in-law at Moubandha.

- 3. On receipt of the ejahar, police registered a case being Dergaon PS Case No. 163 of IPC U/S 366 of IPC and entrusted ASI P. Dutta to investigate the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 366 of IPC read with section (nil) of POCSO Act, 2012.
- 4. When accused Bablu Ghatowar appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 4 of POCSO Act and u/s 363 of IPC 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 DERMINATION:**

- 9. (i) Whether the accused person committed penetrative sexual assault upon the 17 years old girl victim of the informant at Misamora in the house of his friend and thereby committed an offence punishable u/s 4 of POCSO Act?
- (ii) Whether the accused person on 10.03.18 kidnapped the victim, a 17 years old girl from her mother Swaraj Ghatowar being her lawful guardian from her house situated at Line No.3 of Bonbagisa under Dergaon PS and thereby committed an offence punishable u/s 363 of IPC?

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

- 10. To bring home the charges against the accused person, the prosecution examined the following witnesses in the case:-
- (i) Smti. Swaraj Ghatowar(informant/ mother of the victim) PW1
- (ii) Victim PW2
- 11. The defence plea is of total denial. The defence did not adduce any evidence in the case. The accused person was not examined u/s 313 CrPC as there was no incriminating evidence against him.
- 12. I have heard the arguments advanced by the learned counsels for both the sides.
- 13. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.
- PW1(informant/mother of the victim) stated in her examination-in-chief that about one year back, one day, at about 9 PM, when she returned back from her work, she found her daughter(victim) missing from the house and so, out of suspicion she lodged an ejahar against the accused person in Dergaon PS. During cross-examination PW1 stated that her daughter (victim) was aged about 19 years at the time of occurrence and later on, she came to know from her daughter(victim) that she, on her own will, had gone to one of her friend's house to stay for the night and that the accused person had not taken her away. PW1 further stated that

the accused was not at all involved in the occurrence and that she had no grudge against the accused person if he was acquitted in this case.

- 15. PW2 (victim) stated in her examination-in-chief that one day, in the month of March, 2018, at about 7 PM, she went to stay in one of her friend's house without informing her mother and so, when her mother returned home from her work and found her missing from the house, she lodged an ejahar against the accused person out of suspicion. PW2 also stated that later on, she told her mother, Swaraj Ghaowar that she actually went to one of her friend's house to stay for the night and that she was 19 years old at the time of occurrence and presently she was 20 years old. During crossexamination PW2 stated that she was in love with the accused person and so, when her mother found her missing in her house, she suspected that the accused had taken her away from her house and that actually the accused person did not do anything with her on the day of occurrence. PW2 further stated that she did not meet the accused person on the day of occurrence and that the accused was not at all involved in the occurrence.
- 16. From the aforesaid evidence on record, it appears that both the witnesses, namely, PW1(informant/mother of the victim) and PW2(victim) themselves clearly stated in their evidence that the victim was about 19 years old at the time of occurrence. The medical report available on record, though not exhibited or proved by the prosecution also shows that as per X-ray report, the victim was above 18 years of age. The evidence of both PW1 and PW2, i.e., informant and the victim being the most

material witnesses in the case coupled with the medical report clearly shows that the victim was major at the time of incident. The prosecution also could not prove that the victim was a minor girl at the time of occurrence by adducing any documentary evidence. As such, no offence under POCSO Act is attracted in this case.

- 17. Regarding the alleged offence of kidnapping by the accused person, the victim (PW2) herself admitted in her evidence that on the day of occurrence, she went to stay in one of her friend's house without informing her mother and so, when her mother returned home from her work and found her missing from the house, she lodged an ejahar against the accused person out of suspicion. PW2 clearly stated in her cross-examination that actually the accused did not do anything with her on the day of occurrence and that she did not meet the accused person on the day of occurrence and also that the accused was not at all involved in the occurrence. Even the informant(mother of the victim), i.e., PW1 stated in her cross-examination that later on, she came to know from her daughter(victim) that she, on her own will, had gone to one of her friend's house to stay for the night and that the accused person had not taken her away. PW1 also stated that the accused person was not at all involved in the occurrence and that she had no grudge against the accused person if he was acquitted in this case.
- 18. Thus, the evidence of both PW1 and PW2 reveals that the accused was not at all involved in the occurrence of this case. As per evidence of PW1(informant/mother of the victim), she

had lodged the ejahar against the accused person out of suspicion only.

- 19. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charges u/s 363 of IPC and Section 4 of POCSO Act against the accused person. As such, accused Bablu Ghatowar @ Babul is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of six months from today.
- 20. Given under my hand and seal of this Court on this  $I^{st}$  day of **April**, 2019 at Golaghat.

Dictated & corrected by me, (K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

# **APPENDIX**

<u>Prosecution witness:</u>
PW1 – Swaraj Ghatowar (informant/mother of the victim)
PW2 – Victim
Defence witness:
Nil
Documents Exhibited by Prosecution:
Ext. 1 – Statement of victim recorded u/s 164 of Cr.P.C.
Material Exhibited by Prosecution:
Nil.
Defence Exhibit:
Nil.
( K. Hazarika )
Special Judge,
Golaghat.