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

## SPECIAL (POSCO) CASE NO.13/2018

U/S 4 of POCSO Act.

(Arising out of Ghiladhari PS Case No.71/16)

State
-vs-

Sri Gudu Tanti

......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 : Mr. T. Bordoloi, Legal Aid Counsel.

Date of Argument : 28.11.19
Date of Judgment : 28.11.19

## I U D G M E N T

1. Pith and marrow of the prosecution case in brief is that on 06.06.13 one Smti. Uma Garh lodged an ejahar in Ghiladhari PS stating inter-alia that on 01.06.16, at about 5-30 PM, accused person took her daughter(victim) promising to marry her and kept her confined in Usha Garanga Tea Garden and had physical relationship with her and on 03.06.16, the accused person took her to his house but she was not allowed to stay there and thereafter, the accused person took her to Jamuguri Tea

Garden and left her on the road and that the age of her daughter(victim) was 14 years.

- 2. On receipt of the FIR, the Officer-in-Charge, Ghiladhari PS registered a case being Ghiladhari PS Case No.71/16 U/s 366/376(2) (i)/342 IPC read with Sec. 4 of POCSO Act and endorsed SI Bidyut Bikash Boruah to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 4 of POCSO Act.
- 3. When the accused person was brought before the court necessary copies were furnished to him and as the accused person expressed his inability to engage a lawyer, Mr. Tapubrat Bordoloi, learned legal aid counsel was engaged to defend the case of the accused. 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.

#### 4. **POINT FOR DETERMINATION:**

(i) Whether the accused person on 01.06.16 at about 5-30 PM at No.7 Usha Garanga under Ghiladhari PS committed penetrative sexual assault on the victim for two days by persuading to marry her and thereby committed an offence punishable u/s 4 of the POCSO Act ?

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

- 6. To bring home the charge against the accused person, the prosecution side examined 5(five) witnesses and they are as follows:-
- (i) Sri Tilak Garh(son of informant/elder brother of victim) -PW1
- (ii) Dr. Kabita Uzir(Medical Officer) -PW2
- (iii) Sri Bulu Bakti(nephew of informant) PW3

- (iv) Sri Kripa Tanti PW4
- (v) Inspector Bidyut Bikash Boruah(Investigating Officer)
- 7. The defence plea is of total denial. The defence did not adduce any evidence in this case. The accused person was examined u/s 313 CrPC.
- 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.
- 10. PW1(son of informant/elder brother of victim) stated in his examination-in-chief that about 3½ years back, the accused person eloped with his younger sister(victim) and kept her with him and when his mother, Uma Garh, one day, met them, she brought his younger sister(victim) to her house and thereafter, lodged an ejahar against the accused person in Ghiladhari PS. PW1 further stated that his mother Uma Garh had met the accused and the victim in a house of one of their villagers and when his mother brought the victim to her house, she had asked the accused person to marry the victim but the accused person did not marry her. During cross-examination, PW1 stated that he did not know the date of birth of his younger sister(victim) and that as he did not know the date of birth of the victim, she may have been 18 years of age at the time of occurrence. PW1 also stated that the victim had voluntarily on her own eloped with the accused person and stayed with him in his house after getting married as husband and wife but his mother had brought her to her house despite that.

- PW5

- 11. PW2 (M/O) stated in her examination-in-chief that the age of the girl was below 18 years, sign of recent sexual intercourse was not seen and injury on her private part or body was not seen.
- 12. PW3(nephew of informant) stated in his examination-in-chief that he had heard that the accused person had taken away the victim but he could not say where she was taken and that about 6/7 days later, the victim was recovered from the house of Satya Tanti and the accused person was also present there. During cross-examination, PW3 stated that he could not say who had taken the victim.
- 13. PW4 stated in his examination-in-chief that about 3/4 years back, one day, he came to know that the victim, daughter of informant, Uma Garh eloped with the accused person and later on, Uma Garh had brought back the victim from the house of the accused person. PW4 also stated that both the victim and the accused person were in love with each other and so, the victim had eloped with the accused person.
- 14. PW5(I/O) stated in his examination-in-chief about the steps he took during investigation of the case.
- 15. From the aforesaid evidence on record, it appears that the victim had on her own eloped with the accused person, the fact of which had been clearly deposed by the independent witness, PW4. PW1 being the elder brother of the victim deposed in his cross-examination that the victim had voluntarily on her own eloped with the accused person and stayed with him in his house after getting married as husband and wife but his mother brought her to her house despite that. Thus, the evidence of PW1 and PW4 clearly reveals that the victim had voluntarily eloped with the accused person. Though the victim had stated in the ejahar that the age of the victim was 14 years but no proof in respect of the age of the victim

has been submitted in the case. PW1 being the elder brother of the victim testified in his cross-examination that as he did not know the date of birth of the victim, she may have been 18 years of age at the time of occurrence and as she was major, no offence under the POCSO Act is attracted. This evidence of PW1 reveals that the victim was 18 years of age at the time of occurrence. PW3 is merely a hearsay witness and he had deposed in his cross-examination that he could not say as to who had taken away the victim. The prosecution in this case could not examine the vital witnesses of this case, i.e., the informant and victim. Thus, the evidence on record do not support the prosecution case and the ejahar remained uncorroborated by its author.

- 13. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 4 of POCSO Act against the accused person. As such, accused Gudu Tanti is acquitted and set at liberty.
- 14. Given under my hand and seal of this Court on this  $28^h$  day of **November**, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

## **APPENDIX**

# Prosecution witness: PW1 Tilak Garh(son of informant/ elder brother of victim) PW2 Dr. Kabita Uzir(M/O) PW3 Bulu Bakti(nephew of informant) PW4 Kripa Tanti PW5 Inspector Bidyut Bikash Boruah(I/O) **Defence witness:** Nil **Documents Exhibited by Prosecution:** Ext.1 Medical Report Ext.2 Radiologist Report Ext.3 Pathology Report. Material Exhibited by Prosecution: Nil. **Defence Exhibit:** Nil. (K. Hazarika) Special Judge,

Golaghat.