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

# **SPECIAL POCSO CASE NO.56/2019**.

U/S 366 of IPC r/w 6 of POCSO Act.
(Arising out of Kamargaon P.S. case No.147/18)

State

-VS-

Sri Raja Samasi.

..... Accused person.

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

Special Judge,

Golaghat.

# **Appearance**:-

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

For the accused : Mr. T. Bordoloi, Legal Aid Counsel.

Date of Argument : 13.11.19.

Date of Judgment : 13.11.19.

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

1. Pith and marrow of this case is that on 24.12.18 one Smt Phuleswari Tanti lodged an ejahar in Khumtai police outpost stating inter alia that her daughter(victim) used to work in the village with accused Raja Samasi and thus

both fell in love with each other and on 10.12.18 when her said daughter went for work, she did not return back and she could not be traced out till 10 pm.

- On receipt of the FIR, the Officer-in-charge of Kamargaon P.S. registered a
  case being Komargaon P.S. case No.147/2018, U/s 366 IPC and endorsed SI Dilip
  Kr. Bora to investigate into the case. After completion of investigation, police
  submitted charge sheet against the accused person U/S 366 IPC r/w Section of 8
  of the POCSO Act, 2012.
- 3. When the accused person was brought before the Court, necessary copies were furnished to him and as he expressed his inability to engage any lawyer on his own, Mr. Tapubrat Bordoloi, legal aid counsel was engaged to defend his case. After hearing both the sides, charge U/S 366 IPC read with Section 6 of the POCSO Act 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 DETERMINATION:**

- (i) Whether the accused person on 10.12.18, kidnapped the victim, a minor girl from Doriah Tea Estate under Kamargaon P.S. with intent that she may be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366 IPC ?
- (ii) Whether the accused person on the aforesaid date and thereafter committed aggravated penetrative sexual assault on the victim, a minor girl, more than once/repeatedly thereby committed an offence punishable an offence u/s 6 of the POCSO Act?

- 4. To bring home the charge against the accused person, prosecution side examined as many as 3(three) witnesses in the case and they are as follows:-
  - (i) Smti. Phuleswari Tanti(informant/mother of the victim) PW1.
  - (ii) Victim PW2.
  - (iii) Sri Deben Tanti(father of the victim) PW3.
- 5. The defence plea is of total denial. The defence did not adduce any evidence. The accused person was not examined U/S 313 Cr.P.C. as there was no incriminating evidence against him.
- 6. I have heard 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.

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

- 8. PW1(informant/mother of victim) stated in her examination-in-chief that about one year back, one day, there was an altercation between her daughter(victim) and the accused person and out of misunderstanding, she lodged an ejahar against the accused person. PW1 also stated that at the time of occurrence, the age of her daughter(victim) was above 18 years. During cross-examination, PW1 stated that except altercation, no other occurrence had taken place between her daughter(victim) and the accused person.
- 9. PW2(victim) stated in her examination-in-chief that about one year back, one day, there was an altercation between her and the accused person and out of

misunderstanding, her mother lodged an ejahar against the accused person and that at the time of occurrence, her age was above 18 years. During cross-examination, PW2 stated that except altercation, no other occurrence had taken place between her and the accused person.

- 10. PW3(father of victim), stated that about one year back, one day, there was an altercation between his daughter(victim) and the accused person and out of misunderstanding, his wife(PW1) lodged an ejahar against the accused person and that at the time of occurrence the age of his daughter(victim) was above 18 years. During cross-examination, PW3 stated that except altercation, no other occurrence had taken place between his daughter(victim) and the accused person.
- 11. From the aforesaid evidence on record it transpires that none of the witnesses including the informant and the victim had implicated the accused person with the alleged occurrence as stated in the ejahar. All the PWs ranging from PW1 to PW3 had testified in their evidence about an altercation that took place between the victim and the accused person and about lodging of ejahar by PW1(informant) out of misunderstanding. All the PWs had deposed in their cross-examination that except altercation, no other occurrence had taken place between the victim and the accused person and that the age of the victim at the time of occurrence was above 18 years. Considering such evidence it is seen that the age of the victim-girl at the time of occurrence was above 18 years. So no offence under POCSO Act is attracted in this case. Besides that, vital witnesses of the case including the victim also did not support the prosecution case and did not corroborate the contents of the ejahar.
- 12. In view of the above discussions and reasons, I find and hold that prosecution could not establish the charges U/S 366 of IPC r/w 6 of POCSO Act against the accused person. As such, accused Raja Samasi is acquitted and set at liberty. The bail bond of the accused person shall remain in force for a period of 6 months from today.

13. Given under my hand and seal of this Court on this 13<sup>th</sup> day of November, 2019.

Dictated & corrected by me:

(K. Hazarika) Special Judge, Golaghat. (K. Hazarika) Special Judge, Golaghat.

# **APPENDIX**

Prosecution witnesses :-	
PW1- Smti. Phuleswari Tanti(informant),	
PW2- Victim,	
PW3- Sri Deben Tanti(father of the victim)	
Defence witness :-	
Nil	
Documents Exhibited by Prosecution :-	
Nil.	
Material Exhibited by Prosecution :-	
Nil.	
<u>Defence Exhibit</u> :-	
Nil.	
	(K. Hazarika)
	Special Judge
	Golaghat.