IN THE COURT OF THE SPECIAL JUDGE::::::OLAGHAT

SPECIAL(POCSO) CASE NO.27/2018

U/S 366 IPC R/W Sec. 4 of POCSO Act
(Arising out of Ghiladhari PS Case No.28/15)

State

-vs-

Sri Raju Majhi

.....Accused.

Present: Sri K. Hazarika, AJS

Special Judge, Golaghat.

Advocates :-

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

For the accused : Mr. N. Dutta

Date of Argument : 27.05.19
Date of Judgment : 27.05.19

J U D G M E N T

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution case in brief is that on 29.03.15, one Babu Das had lodged an ejahar in Ghiladhari PS stating inter-alia that on that day, at about 1-30 PM, the accused took away his minor daughter, i.e., the victim by persuading her.
- 2. On receipt of the ejahar, police registered a case being Ghiladhari PS Case No.28/15 U/S 366A of IPC and entrusted SI Padma

Kanta Das to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person U/S 366 of IPC read with Section 4 of POCSO Act, 2012.

3. When accused Raju Majhi appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 366 of IPC read with Sec. 4 of 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 DERMINATION:

- 4. (i) Whether the accused person on 29.03.15, at about 1-30 PM at Puranimatikhula gaon under Ghiladhari PS, in absence of any person in the house, kidnapped the victim, i.e., the daughter of the informant Babu Das, 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 of IPC?
- (ii) Whether the accused person on the aforesaid day, time and place committed penetrative sexual assault on the victim, daughter of the informant and thereby committed an offence punishable u/s 4 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

5. To bring home the charge against the accused person, the prosecution examined the following witnesses in the case:-

(i) Sri Babu Das (informant/father of the victim) - PW1

(ii) Victim - PW2

- 6. 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.
- 7. I have heard the arguments advanced by the learned counsels for both the sides.
- 8. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.
- 9. PW1(informant/father of the victim) stated in his examination-in-chief that about 4 years back, one day, at about 2 PM, when PW1 returned home from work, he found his daughter, i.e., the victim, aged 18 years then missing from the house and suspecting that the accused might have taken her away his daughter, PW1 lodged an ejahar against the accused person in Ghiladhari PS. PW1 also stated that on the next day of lodging the ejahar, his daughter(victim) returned home and told him that she went to stay in one of her friend's house on the previous day without informing him and his wife. During cross-examination, PW1 stated that out of misunderstanding, he had lodged the ejahar against the accused person and that at the time of occurrence, his daughter, i.e., the victim was a major girl. PW1 also stated that his daughter, i.e., the victim had told him that the accused was not connected with this case.
- 10. PW2 (victim) stated in her examination-in-chief that about 4 years back, one day, at about 1-30 PM, she went to stay in one of her friend's house without informing her parents and on the next day morning, she returned home and told her parents about it and out of misunderstanding, her father had lodged the ejahar against the accused person in Ghiladhari PS. PW2 also further stated that at the time of occurrence, her age was 18 years. During cross-examination, PW2 stated

that the accused person had not kidnapped her nor had done anything with her on the day of occurrence and that she was a major girl at the time of occurrence. PW2 also further stated that the accused person was no way connected with this case.

- 11. From the aforesaid evidence on record, it transpires that both the informant(PW1) and the victim(PW2) had clearly stated in their evidence that the victim (PW2) was above 18 years at the time of occurrence. Prosecution could not prove that the victim(PW2) was a minor girl at the time of occurrence by adducing any sort of documentary evidence and as such, I have no hesitation to hold that no offence under POCSO Act has been attracted in this case.
- 12. Be that as it may, 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 and on the next day morning, she returned home and told her parents about it and out of misunderstanding, her father had lodged the ejahar against the accused person in Ghiladhari PS. The victim (PW2) testified in her cross-examination that the accused person had not kidnapped her nor had done anything with her on the day of occurrence and that the accused person was no way connected with this case. Broadly in tune with the evidence of PW2, the informant(father of the victim), i.e., PW1 had testified in his evidence that when he returned back from work and found his daughter(victim) missing from the house, he lodged an ejahar against the accused person suspecting that the accused might have taken his daughter(victim) away and that on the next day of lodging the ejahar, his daughter(victim) returned home and told him that she went to stay in one of her friend's house on the previous day without informing him and his wife. PW1 testified in his cross-examination that out of misunderstanding, he had lodged the ejahar against the accused person and that his daughter(victim) had told him that the accused was not connected with this case. Thus, it is seen that both the informant(PW1)

and the victim(PW2) did not implicate the accused person with the alleged occurrence as stated in the ejahar. The evidence on record totally has shattered the prosecution case by not supporting 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 366 of IPC and section 4 of POCSO Act against the accused person. As such, accused is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of 6(six) months from today.
- 14. Given under my hand and seal of this Court on this 27th day of May, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

<u>Prosecution witness:</u>	
PW1 - Babu Das(informant/father of the victim)	
PW2 – Victim	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Ext.1 - Ejahar	
Material Exhibited by Prosecution:	
Nil.	
Defence Exhibit:	
Nil.	
	(K. Hazarika)
	Special Judge,
	Golaghat.