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

## SPECIAL(POCSO) CASE NO.33/2018

U/S 363 of IPC R/W Sec.4 of POCSO Act
(Arising out of Dergaon PS Case No.146/17)

State

-vs-

Shourmarjyoti Baruah @ Akash

.....Accused.

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

Golaghat.

#### **Advocates:**

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

For the accused : Mr. P. Bordoloi.

Date of Argument : 29.04.19
Date of Judgment : 29.04.19

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

1. The prosecution case in brief is that on 13.03.17, one Ajit Bora lodged an ejahar in Dergaon PS stating inter-alia that on that day, at about 6 PM, they came to know from reliable source that when his minor daughter of 16 years old was strolling near his house, the accused had kidnapped her and took her to his (accused's) house.

- 3. On receipt of the ejahar, police registered a case being Dergaon PS Case No. 146 of IPC U/S 366(A) of IPC and entrusted SI B. Bezbaruah to investigate the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 363 of IPC read with section 4 of POCSO Act, 2012.
- 4. When accused Shourmarjyoti Baruah @ Akash appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 363 of IPC read with section 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:**

- 9. (i) Whether the accused person on 13.03.17 committed penetrative sexual assault upon the 16 years old daughter (victim) of the informant at his house situated at Jelehwagaon under Dergaon PS and thereby committed an offence punishable u/s 4 of POCSO Act?
- (ii) Whether the accused person on 13.03.17 at about 6 PM at Bongal gaon under Dergaon PS kidnapped the 16 years old victim from from the lawful guardianship of her father, Ajit Bora 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) Sri Ajit Bora (informant/ father 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.
- 14. PW1(informant/father of the victim) stated in his examination-in-chief that about two years back, one day, in the month of March, at about 7-30 PM, when he returned back home from his work, he found his minor daughter(victim) missing from his house and out of suspicion, he lodged an ejahar against the accused person in Dergaon PS. PW1 also stated that on the same day, at about 10 PM, his minor daughter (victim) returned back home and told him that she had gone to one of her friend's house without informing her mother. During cross-examination PW1 stated that the accused person was not at all involved in the occurrence and that he only suspected that the accused had kidnapped his daughter and that the accused had not committed any offence.

- 15. PW2 (victim) stated in her examination-in-chief that about two years back, one day, in the month of March, she went to stay in one of her friend's house without informing her parents and so, out of suspicion, her father(PW1) lodged an ejahar against the accused person. PW2 further stated that she returned back home on that day itself and informed her parents that she had gone to one of her friend's house. During cross-examination, PW2 stated that the accused person was not at all involved in the occurrence and that the accused had not committed any offence.
- 16. From the aforesaid evidence on record, it appears that both the witnesses, namely, PW1(informant/father of the victim) and PW2(victim) clearly stated in their evidence that on the day of occurrence, PW2(victim) went to one of her friend's house without informing her mother and so, when PW1(informant) returned home from his work and found her missing from the house, he lodged an ejahar against the accused person out of suspicion. PW2 clearly stated in her cross-examination that the accused was not at all involved in the occurrence and that the accused had not committed any offence. During cross-examination, PW1(informant) stated that the accused was not at all involved in the occurrence and that he only suspected that the accused had kidnapped his daughter and that the accused person had not committed any offence.
- 17. 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/ father of the victim), he

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

- 18. 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 Shourmarjyoti Baruah @ Akash is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of six months from today.
- 19. Given under my hand and seal of this Court on this **29**<sup>th</sup> day of **April**, **2019** at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

# **APPENDIX**

Prosecution witness:
PW1 – Ajit Bora (informant/father of the victim)
PW2 – Victim
Defence witness:
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.
Defence Exhibit :
Nil.
(K. Hazarika)
Special Judge,
Golaghat.