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

SPECIAL (POSCO) CASE NO.14/2018

U/S 365 of IPC R/W Sec.4 of POCSO Act.

(Arising out of Golaghat PS Case No.29/18)

State

-vs-

Md. Mono Ali @ Asfik Ali

.....Accused person.

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

Golaghat.

<u> Appearance :-</u>

For the State : Mr.N. N. Hazarika, Addl. P.P.

For the accused: Md. I. Hussain

Date of Argument : 11.07.19
Date of Judgment : 11.07.19

J U D G M E N T

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution in brief is that one Rupamoni Bora lodged an ejahar in Golaghat PS on 16.01.18 stating inter-alia that on 10.01.18 at about 7 PM, the accused person ran away with her daughter, i.e., victim who was studying in Class X from the house and prior to four months also, the accused had ran away with her daughter(victim).
- 2. On receipt of the FIR, the Officer-in-Charge, Golaghat PS registered a case being Golaghat PS Case No.29/18 U/S 365 IPC and

endorsed SI Tulan Ch. Das to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 365 IPC read with section 4 of POCSO Act.

3. When the accused person appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 365 IPC read with section 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.

POINTS FOR DETERMINATION:

- 5. (i) Whether the accused on 10.01.18 at about 7 PM at No.2 Doigrung village under Golaghat PS kidnapped the 14 years old daughter(victim) of informant, Smti. Rupamoni Bora with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable u/s 365 IPC?
- (ii) Whether the accused committed penetrative sexual assault on the victim, the 14 years old daughter of informant, Smti. Rupamoni Bora after kidnapping her and thereby committed an offence punishable u/s 4 of POCSO Act?
- 6. To bring home the charge against the accused person, the prosecution side examined 3(three) witnesses and they are as follows:-
- (i) Smti. Rupamoni Bora(informant/mother of victim) -PW1
- (ii) Victim -PW2
- (iii) Sri Suren Bora(father of victim) PW3
- 7. The defence plea is of total denial. The defence did not adduce any evidence in this case. The accused person was not examined u/s 313 CrPC as there was no incriminating evidence against him.
- 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.

DISCUSSION, DECISION AND REASONS THEREOF:

- 11. PW1(informant) stated in her examination-in-chief that about 1½ years back, one day, at about 7 PM, her daughter(victim) eloped with the accused person without informing her and out of anger, she had lodged an ejahar against the accused person in Numaligarh Police Out Post and that at the time of occurrence, her daughter(victim) was 19 years old. During cross-examination, PW1 stated that the accused person neither kidnapped nor abducted her daughter(victim) nor committed any penetrative sexual assault on her. PW1 also stated that her daughter (victim) being major at the time of occurrence, on her own wish, had eloped with the accused person.
- 13. PW2 (victim) stated in her examination-in-chief that about 1½ years back, one day, at about 7 PM, she eloped with the accused person without informing her parents and out of anger, her mother lodged an ejahar against the accused person in Numaligarh Police Out Post and that at the time of occurrence, her age was 19 years. During cross-examination, PW2 stated that the accused person neither kidnapped nor abducted her nor committed any penetrative sexual assault on her and that she was 19 years old at the time of occurrence and so, being major and on her own wish, she had eloped with the accused person.
- 14. PW3(father of victim) stated in his examination-in-chief that about $1\frac{1}{2}$ years back, one day, at about 7 PM, his daughter(victim) eloped with the accused person without informing him and his wife and out of

anger, his wife lodged an ejahar against the accused person in Numaligarh Police Out Post and that at the time of occurrence, the age of his daughter(victim) was 19 years. During cross-examination, PW3 stated that the accused person neither kidnapped nor abducted his daughter(victim) nor committed any penetrative sexual assault on her and that his daughter(victim) was a major girl at the time of occurrence and she, on her own wish, had eloped with the accused person.

- 15. From the aforesaid evidence on record, it transpires that all the witnesses including the informant and the victim did not implicate the accused person with the alleged occurrence as stated in the ejahar. PW1(informant/mother of the victim), PW2 (victim) and PW3 (father of victim) themselves clearly stated in their evidence that at the time of occurrence, the age of the victim girl was 19 years. Thus, it has become clear that the victim was a major girl at the time of incident. The prosecution could not prove that the victim was a minor girl at the time of occurrence by adducing any sort of evidence, be it oral or documentary. As such, no offence under the POCSO Act is attracted in this case.
- 16. Regarding the alleged offence of kidnapping by the accused person, PW2 (victim) herself deposed in her cross-examination that the accused person neither kidnapped nor abducted her. Close on the heels of the evidence of PW2(victim), PW1(informant/mother of the victim) and PW3(father of victim) also testified in their evidence that the accused person neither kidnapped nor abducted their daughter(victim) on the day of the occurrence. Thus, the evidence of the witnesses reveals that the accused was not at all involved in the occurrence of the case but it was the victim who had eloped with the accused person without informing PW1 and PW3.i.e., her parents on her own wish. The evidence of the victim and the informant has totally shattered the prosecution case thereby.

- 17. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 365 IPC read with section 4 of POCSO Act against the accused person. As such, accused Mono Ali @ Asfik Ali is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.
- 18. Given under my hand and seal of this Court on this 11^h day of **July**, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

Prosecution witness:	
PW1 Rupamoni Bora (informant)	
PW2 Victim	
PW3 Suren Bora	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Ext. l Ejahar.	
Material Exhibited by Prosecution:	
Nil.	
Defence Exhibit:	
Nil.	
	(K. Hazarika)
	Special Judge,
	Golaghat.