DISTRICT : GOLAGHAT. HEADING OF JUDGMENT IN SPECIAL CASES :

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No.41/2017. Arising out of G.R. Case No.1169/2016. U/S 4 of POCSO Act.

Present :- Shri S. K. Sharma, Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Shri Mohan Marar. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. J. Bhuyan,

Advocate, Golaghat.

Dates of evidence : 13.09.2018, 03.11.2018,

10.01.2019, 11.02.2019, 13.03.2019, 14.06.2019,

05.07.2019.

Date of argument : 05.03.2020.

Date of Judgment : 05.03.2020.

JUDGMENT:

- 1. The accused Shri Mohan Marar, son of Shri Bulmal Marar, resident of village Bandarchalia, under Titabor Police Station, District Jorhat, Assam, here in this case, has been put to face the trial to answer the charge u/s 4 of POCSO Act.
- 2. The fact as disclosed in the First Information Report, may in brief, be narrated as under -

That on 24.07.2016, the informant Shri Sanjib Sawachi has lodged an ejahar before the I/C of Furkating Police Outpost alleging inter-alia that on 23.07.2016, at about 7'30 P.M. at night, some unknown youths came to his house situated at Furkating Bagan in 4 Nos. of motorcycles and kidnapped his daughter, aged about 17 years from his house. The informant also alleged that later on, he came to know that the said youths belonged to the village Bandarchalia, Titabor, District – Jorhat.

- 3. On receipt of the written ejahar from the informant, the I/C of Furkating Police Out post recorded the Furkating Out Post GDE No. 386, dated 24.07.2016 and forwarded the said ejahar to the O/C of Golaghat Police Station for registration of a case. Accordingly, the O/C of Golaghat Police Station on receipt of the ejahar, registered the case being Golaghat P.S. Case No.539/2016, u/s 366-A/34 of IPC and endorsed S.I. Shankar Doyal to investigate the case. During investigation, the I.O. visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. He also seized one school certificate of the victim. During investigation, the I.O. also got the statement of the victim recorded in the Court. Then on completion of investigation, the I.O. submitted charge sheet against accused Mohan Marar under section 4 of POCSO Act to stand trial in the Court.
- 4. On appearance of the accused person before this court, and after hearing learned counsels of both sides, my learned predecessor has framed charge against the accused under section 4 of POCSO Act and the contents of the charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

- 5. To bring home the charge against the accused, the prosecution side has examined as many as 9 witnesses including the M.O. and I.O. After closing the prosecution evidence, the statement of the accused was recorded under the provisions of Section 313 of Cr.P.C. The plea of the accused is total denial.
- 6. I have heard Mr. P. Bora, learned Special Public Prosecutor for the State and Mr. J. Bhuyan, learned counsel for the accused.

NOW THE POINT FOR DETERMINATION IS -

7. Whether the accused on 23.07.2016 and after the said date also, at Dhaplating and in his house, committed penetrative sexual assault upon the victim child and thereby, committed an offence punishable under section 4 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

8. P.W.1 is the victim girl, who deposed in her evidence that she knows the accused person. The occurrence took place in the month of July, 2016, at about 7'30 P.M. at night and at the time of occurrence, when she went to the shop then on the road, the accused person along with three other boys came there and took her in their bike by intimidating her to the house of accused at Bandarchalia, Titabor. P.W.1 also deposed that in the house of the accused, she stayed there for four days as his wife. The accused also forcefully committed sexual intercourse with her. Thereafter, her father searched for her and when her father did not find her out then her father lodged the ejahar at Police Station. Thereafter, police recovered her from the house of the accused person. P.W.1 further deposed that police did not get her examined by Doctor but police got her statement recorded in the Court. Ext-1 is her statement and Ext-1(1) is her signature. At the time of occurrence, she was reading in Class IX at Furkating Gajanan Jallan Ucha Balika Vidyalaya.

In cross examination, P.W.1 has stated that at present, she is reading in Class X. She does not know the persons who at the time of occurrence accompanied the accused person. There are 5/6 shops near the place of occurrence. P.W.1 also stated that she did not raise hue and cry when the accused forcefully boarded her on the bike. P.W.1 has denied defence suggestion that the accused did not forcefully take her in his bike and also did not forcefully committed sexual intercourse with her and also she did not state the said fact before police and the Magistrate. Later on, P.W.1 has stated that she did not state before police that the accused forcefully took her. When she gave her statement before the Court then she told before the Magistrate that her year of birth is 1997. She also stated before Magistrate that at the time of occurrence, she was 18 years old and she elopped with the accused at her own will. She has further denied defence suggestion that she deposed false evidence as tutored by her father.

9. P.W.2 is the mother of the victim, who deposed in her evidence that about two years back, at around 7'30 P.M., at night, when the victim went to the shop then from the road, the accused took the victim in his bike to his house. Thereafter, her husband searched for the victim and when her husband did not find out the victim then her husband lodged the ejahar at Police Station. Later on, police recovered the victim. At the time of occurrence, the victim was reading in Class IX and at that time she was 16/17 years old.

In cross examination, P.W.2 has stated that she did not see the occurrence. At present, the victim is reading in Class IX. She does not remember that at the time of occurrence, what was the actual age of the victim. P.W.2 has denied defence suggestion that at the time of occurrence, the accused did not take the victim forcefully.

10. P.W.3 is the informant of this case. His evidence reveals that the occurrence took place on 24.12.2016. On the day of occurrence, at about 7 P.M. at night, when the victim went to the shop

then the accused took the victim from the road in his motorcycle. He did not see the occurrence. Thereafter, he searched for the victim, but could not succeed and on the next day of the occurrence, he lodged the ejahar at Police Station. Thereafter, police recovered the victim from Titabor and then police handed over the victim to him. P.W.3 also deposed that the victim gave her statement before the Court. After the occurrence, the victim again elopped with the accused but they took the victim from the possession of the accused. At the time of occurrence, the victim was reading in Class-IX at Gajanan Jallan Balika Vidyalaya. P.W.3 further deposed that he produced the school certificate of the victim before the Court. Ext-2 is the school certificate of the victim. The victim told before him (P.W.3) that she was staying in the house of accused for four days as husband and wife. Ext-3 is the ejahar and Ext-3(1) is his signature.

In cross examination, P.W.3 has stated that he came to know the name of the accused on the next day of the occurrence. He has denied defence suggestion that he deposed false evidence and the school certificate of the victim which he produced before the Court is fake. P.W.1 has further denied defence suggestion that the age of the victim mentioned in the school certificate is not the actual age of the victim. He has also denied defence suggestion that at the time of occurrence, the age of the victim was 18 years.

11. P.W.4 Shri Biju Sawachi has deposed in his evidence that the victim is her niece. The occurrence took place on 23rd July, 2016, at about 7 P.M. at night. On the day of occurrence, when the victim went to the shop then the accused forcefully took the victim in his bike to his house from the road. Thereafter, they searched for the victim, but could not find her out. Thereafter, the informant has lodged the ejahar at Police Station and later on, after 3/4 days of the occurrence, police recovered the victim girl.

In cross examination, P.W.4 has stated that he did not see the occurrence. He has denied defence suggestion that he deposed falsely that on the day of occurrence, the accused forcefully took the victim in his bike. P.W.4 also stated that he did not state before police that the accused forcefully took the victim. He has further denied defence suggestion that the victim voluntarily elopped with the accused due to their love affair.

12. P.W.5 Shri Sanju Sawachi has deposed in his evidence that the victim is his niece. When he was present in his shop, then the informant told him that on 23.07.2016, in the evening, the accused forcefully took the victim in his bike. Thereafter, when the informant lodged the ejahar at Police Station, then police recovered the victim.

In cross examination, P.W.5 has stated that he did not see the occurrence. He has denied defecte suggestion that the informant did not state before him that on the day of occurrence, the accused forcefully took the victim in his bike.

13. P.W.6 Shri Lakhi Sawachi has deposed in his evidence that the occurrence took place on 23.07.2016, at about 7 P.M., in the evening at Furkating Chari-ali. On the day of occurrence, when he was doing his duty at the tea garden then his wife informed him over phone that 4/5 boys took the victim in the motorcycle and among the said 4/5 boys, the accused was also present there. Thereafter, when the informant lodged the ejahar then police recovered the victim.

In cross examination, P.W.6 has stated that he did not see the occurrence. He has denied defence suggestion that nobody told him that on the day of occurrence the accused took the victim in the motorcycle.

14. P.W.7 Shri Ajit Sawachi has deposed in his evidence that he does not know the accused person. In the year 2016, on one

day, he heard that the victim elopped with someone. Thereafter, the informant lodged the ejahar at Police Station and then police recovered the victim girl. Now the victim is residing in the house of the informant.

In cross examination, P.W.7 has stated that he does not know the victim elopped with whom.

- 15. P.W.8 Dr. Sanjib Phukan has deposed in his evidence that on 27.07.2016, he was working at S.K.K. Civil Hospital, Golaghat as Senior Medical & Health Officer. On that day, the patient, i.e. the victim girl was brought before him in connection with Golaghat P.S. Case No.539/2016, u/s 366-A/34 of IPC on being escorted and identified by Lady Home Guard Smti. Annada Gogoi for medical examination. But the patient refused to give her consent for medical examination by signing her name in the requisition slip sent by concerned Police Station. So, he could not go for any examination of the said girl. Ext-4 is the medical requisition letter and Ext-4(1) is his signature. Ext-4(2) is the signature of the patient.
- 16. P.W.9 Shri Shankar Doyal has deposed in his evidence that on 24.07.2016, he was working as In-charge at Furkating Police Outpost. On that day, the informant Sanjib Sawachi has lodged an ejahar before the Outpost and on receiving the ejahar, he recorded Furkating Outpost GDE No.380, dated 24.07.2016 and then forwarded the said ejahar to the O/C of Golaghat Police Station for registration of a case. Accordingly, on receipt of the ejahar, the O/C of Golaghat Police Station registered the case vide Golaghat P.S. Case No.539/2016, u/s 366-A/34 of IPC and entrusted him to investigate the case. During investigation, he visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. Ext-5 is the sketch map and Ext-5(1) is his signature. During investigation, he seized one school certificate of the victim. Ext-6 is the seizure list and Ext-6(1) is his signature. He also got the statement of the victim

recorded in the Court. Thereafter, on completion of investigation, he submitted charge sheet against the accused u/s 366 of IPC, read with section 4 of POCSO Act. Ext-7 is the charge sheet and Ext-7(1) is his signature.

In cross examination, P.W.9 has stated that he did not make inquiry regarding the genuineness of the school certificate of the victim. He recovered the victim girl from Jakhalabandha and he did not record the statement of nearby people wherefrom the victim was recovered. P.W.9 has denied defence suggestion that he did not investigate the case properly.

17. Now with regard to the question of age of the victim, there is no medical evidence as apparently the victim refused medical examination. The Ext-2 School certificate is a photocopy, with no indication that it was proved in original. The issuing authority was not examined by the prosecution to prove its authenticity and the I.O. also admitted that he could not make any enquiry regarding the genuineness of the said certificate. The victim herself stated her age to be eighteen at time of occurrence before the Magistrate. On the basis of this evidence, it is not established that the victim was a child below eighteen years of age at the time of occurrence.

18. The version of the P.W.1 victim with regard to the occurrence is not without its share of inherent improbabilities. She deposed that 3 boys coming with the accused and taking her on a bike, which is impossible and it is left to the Court to surmise that there were more bikes thereon. There were 5/6 shops wherefrom she was forcibly picked up but she raised no hue and cry. She admitted to not having stated before the I.O. that the accused took her forcibly and also that she had told the Magistrate that she had elopped of her own will with the accused. Although she deposed that the accused had forcible sexual intercourse with her, when she stayed as the wife of the accused at his house for four days, she is silent as to whether she complained to anyone at that time or to whether she was under any form of restraint that prevented her from doing so or from escaping. There is also no medical evidence to support such claims of forcible sexual intercourse, if any, was consensual in

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nature, the victim not being established to be a minor. The ingredients of the offence

u/s 4 of POCSO Act or 376 of IPC are therefore not established in the present case.

19. In the result, I hold that the prosecution has not been able to

establish its case under Section 4 of POCSO Act. Consequently, accused

Mohan Marar is acquitted of the said offence and set at liberty

forthwith. His bail bond shall remain in force for a further period of six

months from today.

Given under my hand and seal of the Court on this the 5th day of March,

2020.

(S. K. Sharma), Special Judge,

Golaghat.

Dictated & corrected by me.

Special Judge, Golaghat.

APPENDIX:

WITNESSES FOR THE PROSCUTION:

- 1. P.W.1 The victim girl.
- 2. P.W.2 Smti. Rina Sawachi.
- 3. P.W.3 Shri Sanjib Sawachi.
- 4. P.W.4 Shri Biju Sawachi.
- 5. P.W.5 Shri Sanju Sawachi.
- 6. P.W.6 Shri Lakhi Sawachi.
- 7. P.W.7 Shri Ajit Sawachi.
- 8. P.W.8 Dr. Sanjib Phukan, M.O.
- 9. P.W.9 Shri Shankar Doyal, I.O.

WITNESS FOR THE DEFENCE : - Nil.

EXHIBITS FOR THE PROSCUTION:

- 1. Ext-1 Statement of the victim recorded u/s 164 of Cr.P.C.
- 2. Ext-2 School certificate of the victim.
- 3. Ext-3 Ejahar.
- 4. Ext-4 Requisition letter for medical examination.
- 5. Ext-5 Sketch map of the place of occurrence.
- 6. Ext-6 Seizure list.
- 7. Ext-7 Charge sheet.

EXHIBITS FOR THE DEFENCE: - Nil.

Special Judge, Golaghat.