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

## SPECIAL(POSCO) CASE NO.51/2019

U/S 366 of IPC R/W Sec.6 of POCSO Act
(Arising out of Barpathar PS Case No.07/19)

State -vs-Sri Mukesh Mardi

......Accused person.

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

## <u> Appearance :-</u>

For the State : Mr.P. Bora, Special. P.P. For the accused : Mr.M.K. Buragohain

Date of Argument : 13.02.2020 Date of Judgment : 13.02.2020

### JUDGMENT

1. Pith and marrow of the prosecution case is that on 03.01.19, one Smti. Moni Tudu lodged an ejahar in Borpathar PS stating inter-alia that on 18.12.18 at about 2 PM, the accused person kidnapped her minor daughter(victim) aged about 15 years while she was coming from Tengrajan High School persuading her with false promises from the road and kept for a few days in an unknown place and on that day, she came to know that the accused person took her to his own house and kept her

there.

- 2. On receipt of the FIR, the Officer-in-Charge, Barpathar PS registered a case being Borpathar PS Case No.07/19 U/S 366 IPC and endorsed SI Puspa Hazarika to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused persons u/s 366 IPC read with section 6 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 was framed against the accused person u/s 366 IPC read with section 6 of POCSO Act which was read over and explained to him to which he pleaded not guilty and claimed to be tried.

#### **POINTS FOR DETERMINATION:**

- (i) Whether the accused person on 28.12.18 at about 2 PM, kidnapped the victim, a minor girl of 15 years while she was returning from Tengrajan High School under Barpathar PS 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 and thereby committed an offence punishable u/s 6 of POCSO Act?

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

- 4. To bring home the charge against the accused person, the prosecution side examined as many as 4(four) witnesses in the case. They are as follows:-
- (i) Smti.Moni Tudu (Informant/mother of victim)

-PW1

(ii) Smti. Sonali Hemrom(elder sister of victim)

-PW2

(iii) Smti. Jonali Hemrom(elder sister of victim)

- PW3

(iv) Victim

-PW4

- 5. 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.
- 6. I have heard the 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 charge against the accused person.
- 8. PW1(informant) stated in her examination-in-chief that about one year back, one day at about 2 PM, there was an altercation between her youngest daughter(victim) and accused Mukesh Mardi and so, out of misunderstanding, she lodged an ejahar in Borpathar PS and that at the time of occurrence, the age of her daughter(victim) was 18 years.
- 9. PW2 and PW3(elder sisters of victim) stated in their examination-in-chief that they did not know anything about the occurrence.
- 10. PW4(victim) stated in her examination-in-chief that about one year back, one day at about 2 PM, there was an altercation between her and the accused and out of misunderstanding, her mother, Smti. Moni Tudu lodged an FIR before Borpathar PS and that at the time of occurrence, her age was 20 years.
- 11. From the evidence on record, it transpires that the witnesses of the case including the informant(PW1) and victim(PW4) did not implicate

the accused person with the alleged offence as stated in the ejahar. PW1(informant) only testified in her evidence about an altercation that had taken place between her youngest daughter(victim) and accused Mukesh Mardi and lodging of an ejahar by her out of misunderstanding in Borpathar PS. The victim(PW4) also only testified in her evidence about an altercation which took place between her and the accused person and lodging of an FIR by her said mother out of misunderstanding in Borpathar PS. The other related witnesses, namely, PW2 and PW3 being the elder sisters of the victim in the case expressed their complete ignorance about the alleged occurrence in their evidence. PW1 stated that the age of victim(PW4) was 18 years at the time of occurrence and PW4 also stated in her evidence that her age was 20 years at the time of the occurrence. 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. Thus, it is seen that the witnesses did not support the prosecution case and could not prove the contents of the ejahar.

11. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 366 IPC read with Sec. 6 of POCSO Act against the accused person. As such, accused Mukesh Mardi 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.

Given under my hand and seal of this Court on this 13th day of **February, 2020** at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)
Special Judge,

Calambat

Golaghat.

# APPENDIX

<u>Prosecution witness:</u>
PW1 Smti. Moni Tudu (Informant/mother of victim)
PW2 Smti. Sonali Hemrom (elder sister of victim)
PW3 Smti. Jonali Hemrom (elder sister of victim)
PW4 Victim
Defence witness:
Nil.
Documents Exhibited by Prosecution:
Ext.l Ejahar
Ext.l Ejahar
Ext.1 Ejahar  Material Exhibited by Prosecution:
Material Exhibited by Prosecution :
Material Exhibited by Prosecution :
Material Exhibited by Prosecution : Nil.
Material Exhibited by Prosecution :  Nil.  Defence Exhibit :

(K. Hazarika)
Special Judge,
Golaghat.