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

SPECIAL (POSCO) CASE NO.49/2018

U/S 366 of IPC R/W Sec.8 of POCSO Act.

(Arising out of Merapani PS Case No.87/18)

State -vs-Sri Tulan Bora

......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: Mr. A. Kachari

Date of Argument : 20.07.19
Date of Judgment : 20.07.19

JUDGMENT

1. For the sake of skipping expatiation, the encapsulated version of the prosecution case is that one Ritumoni Thengal lodged an ejahar in Merapani PS on 18.04.18 stating inter-alia that on 13.04.18 at about 8-30 PM, when her daughter, i.e., the victim, aged about 17 years came out to the road in front of her house, some unknown person had kidnapped her and while searching for her, on 15.04.18, she came to know that the accused forcibly kidnapped her daughter, took her to his house and married her by confining her in his house and involved in sexual intercourse with her.

- 2. On receipt of the FIR, the Officer-in-Charge, Merapani PS registered a case being Merapani PS Case No.87/18 U/S 363 IPC read with section 4 of POCSO Act and endorsed SI D. Medhi to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 363 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 366 IPC read with section 8 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.

4. **POINTS FOR DETERMINATION:**

- (i) Whether the accused person on 13.04.18 at about 8-30 PM at Chaudangpathar Merachuk gaon under Merapani PS kidnapped the informant's daughter, that is, the victim, aged about 17 years from the road in front of her house 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 IPC?
- (iii) Whether the accused person committed penetrative sexual assault on the victim, the 17 years old daughter of the informant and thereby committed an offence punishable u/s 8 of POCSO Act?
- 6. To bring home the charge against the accused person, the prosecution side examined as many as 6(six) witnesses in this case and they are as follows:-

(i) Smti. Ritumoni Thengal (informant/mother of the victim)	-PW1
(ii) Victim	-PW2
(iii) Smti. Arati Sonowal	- PW3
(iv) Smti. Moni Thengal	- PW4
(v) Sri Puneswar Kachari	- PW5
(vi)Sri Paban Bora	- PW6

- 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:

- 10. PW1(informant/mother of the victim) stated in her examination-in-chief that about one year back, one day, at about 8-30 PM, her daughter, i.e., victim went missing from the house and thereafter, she lodged an ejahar against the accused person in Merapani PS and that later on, she came to know that her daughter, i.e., the victim on her own wish, had eloped with accused Tulan Bora and married him. PW2 also stated that at the time of occurrence, the age of her daughter, i.e., the victim was 18 years. During cross-examination, PW1 stated that accused Tulan Bora did not abduct her daughter, i.e., the victim on the day of the occurrence and did not commit sexual assault on her.
- 11. PW2 (victim) stated in her examination-in-chief that about one year back, one day, at about 7 PM, she, on my own wish, eloped with the accused and finding her missing in the house, her mother lodged an ejahar against the accused person in Merapani PS. PW2 also stated that at the time of occurrence, her age was about 18 years. During cross-examination, PW2 stated that the accused did not abduct her on the day of the occurrence and did not also commit sexual assault on her.
- 13. PW3, PW4, PW5 and PW6 stated in their examination-in-chief

that they did not know anything about the occurrence.

- 14. 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) and PW2 (victim) themselves clearly stated in their evidence that at the time of occurrence, the age of the victim girl was 18 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.
- 15. Regarding the alleged offence of kidnapping by the accused person, PW2 (victim) herself deposed in her evidence that she, on her own wish eloped with the accused and testified in her cross-examination that the accused did not abduct her on the day of the occurrence. Close on the heels of the evidence of PW2(victim), PW1(informant/mother of the victim) also testified in her evidence that she came to know that her daughter, i.e., the victim on her own wish had eloped with accused Tulan Bora and married him. PW1 also further stated that accused Tulan Bora did not abduct her daughter, i.e., victim on the day of the occurrence. The other independent witnesses examined by the prosecution, i.e., PW3, PW4, PW5 and PW6 expressed their ignorance about the alleged occurrence in their evidence. 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, a major girl at the time of occurrence who had voluntarily eloped with the accused person and the accused person had not forcefully abducted her. The evidence of the victim and the informant has totally shattered the prosecution case thereby.
- 16. 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 section 8 of POCSO Act against the accused person. As such, accused Tulan Bora is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.

- 17. Return the seized Birth Certificate of the victim to the informant after proper verification in accordance with law.
- 18. Given under my hand and seal of this Court on this 20^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 Ritumoni Thengal (informant/mother of the vio	ctim)
PW2 Victim	
PW3 Arati Sonowal	
PW4 Moni Thengal	
PW5 Puneswar Kachari	
PW6 Paban Bora	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Ext.1 Ejahar.	
Ext.2 Statement recorded u/s 164 CrPC	
Material Exhibited by Prosecution:	
Nil.	
D.C	
Defence Exhibit:	
Nil.	
	(K. Hazarika)
	Special Judge
	Golaghat.