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

SPECIAL (POSCO) CASE NO.17/2019

U/S 366/342 of IPC R/W Sec.4 of POCSO Act. (Arising out of Barpathar PS Case No.159/18)

State
-vsSri Tuntun Das

......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. B. Chetia

Date of Argument : 18.07.19
Date of Judgment : 18.07.19

JUDGMENT

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution in brief is that one Janak Gowalla lodged an ejahar in Barpathar PS on 28.11.18 stating inter-alia that on 27.11.18 at about 8 PM, the accused person came to their house when he went to a neighbour's house and took away his daughter(victim) aged about 15 years from his house by persuading her and kept her confined in an unknown place.
- 2. On receipt of the FIR, the Officer-in-Charge, Barpathar PS registered a case being Barpathar PS Case No.159/18 U/S 366/342 IPC and

endorsed ASI Roma Kt. Borah to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 366/342 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 366/342 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.

4. **POINTS FOR DETERMINATION:**

- (i) Whether the accused person on 27.11.18 at about 8 PM at Tengani Rajgarh Khatkhati gaon under Barpathar PS kidnapped the 15 years old daughter of informant, Janak Gowalla with intention 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 ?
- (ii) Whether the accused at Kamarbondha and Oating wrongfully confined the daughter(victim) of the informant for two days and one day respectively and thereby committed an offence punishable u/s 342 IPC?
- (iii) Whether the accused at Kamarbandha committed penetrative sexual assault on the 15 years old daughter of the informant 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 4(four) witnesses and they are as follows:-

(i) Sri Janak Gowalla (informant/father of the victim) -PW1

(ii) Victim -PW2

(iii) Sri Sarupona Das - PW3

(iv) Sri Jadav Das - PW4

- 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/father of the victim) stated in his examination-inchief that about 7/8 months back, one day, at about 8 PM, as he did not find his daughter(victim) in his house, he lodged an ejahar against the accused person out of misunderstanding in Barpathar PS. During cross-examination, PW1 stated that accused Tuntun Das had neither kidnapped his daughter(victim) nor wrongfully confined her and also did not commit penetrative sexual assault on her.
- 13. PW2 (victim) stated in her examination-in-chief that about 7/8 months back, one day, at about 8 PM, when she went to one of her friend's house without informing her parents, her father, Janak Gowalla finding her missing from the house, lodged an ejahar in Barpathar PS.
- 14. PW3 and PW4 stated in their examination-in-chief that they did not know anything about the occurrence.
- 15. From the aforesaid evidence on record, it transpires that all the witnesses of the case including the informant and victim did not implicate the accused person with the alleged offence as stated in the ejahar. PW1 deposed that as he did not find his daughter(victim) in his house on the

day of occurrence, he lodged an ejahar against the accused person out of misunderstanding in Barpathar PS and during cross-examination, PW1 stated that the accused did not kidnap his daughter(victim) nor wrongfully confined her and also did not commit penetrative sexual assault on her. PW2 (victim) herself deposed in her evidence that when she went out to one of her friend's house without informing her parents, her father, Janak Gowalla (PW1) finding her missing from the house, lodged an ejahar in Barpathar PS. On the other hand, the independent witnesses of the case, namely, PW3 and PW4 expressed their ignorance about the alleged occurrence in their evidence. Thus, it is seen that the evidence of the vital witnesses have 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 366/342 IPC read with section 4 of POCSO Act against the accused person. As such, accused Tuntun Das 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 Transfer/Leaving Certificate of the victim to Janak Gowalla, i.e., father of the victim after proper verification in accordance with law.
- 18. Given under my hand and seal of this Court on this 18^h day of **July**, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

<u>Prosecution witness:</u>	
PW1 Janak Gowalla (informant/father of the victim)	
PW2 Victim	
PW3 Sarupona Das	
PW4 Jadav Das	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Ext.1 Ejahar.	
Matarial Published by Dragogutian	
Material Exhibited by Prosecution:	
Nil.	
Defence Exhibit:	
Nil.	
(K. H	azarika)
Speci	al Judge,
Gol	laghat.