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

SPECIAL(POCSO) CASE NO.02/2019

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

(Arising out of Dergaon PS Case No.313/14)

State

-**v**s-

Sri Dharmeswar Nagbongshi

.....Accused.

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

Special Judge,

Golaghat.

Appearance:-

For the State : Mr. P. Bora, Special P.P.

For the accused : Md. M. Ali

Date of argument : 14.06.19

Date of Judgment : 14.06.19

J U D G M E N T

1. The prosecution case in brief is that on 02.11.14, one Anurudh Karmakar lodged an ejahar in Dergaon PS stating interalia that on 29.10.14, at about 7 PM, when his 14 years old daughter

(victim) went to a shop, the accused person with the help of two youths of the village took her in a car forcefully to an unknown place.

- 2. On receipt of the ejahar, police registered a case being Dergaon PS Case No.313/14 U/S 366A/34 of IPC and the Officer-in-Charge of Dergaon PS entrusted ASI D. Saikia to take presteps in the case and endorsed himself for completing the investigation. After completion of investigation, police submitted charge-sheet against the accused person u/s 366A of IPC read with section 3 of POCSO Act.
- 3. After the accused person appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 366A 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.

POINTS FOR DERMINATION:

- 4. (i) Whether the accused on 29.10.14 at about 7 PM at Balijan Natur Line under Dergaon PS, took the victim aged about 14 years in a car and touched her with sexual intent which involved physical contact without penetration and thereby committed an offence punishable u/s 8 of POCSO Act?
- (ii) Whether the accused on the aforesaid date, time and place induced the victim, a minor girl of 14 years, to go from her house with intent that she may be or knowing that it is likely that

she will be forced to illicit intercourse by the accused and thereby committed an offence punishable u/s 366A IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

- 5. To bring home the charges against the accused person, the prosecution examined only two witnesses, namely, the following witnesses in this case.
- (i) Anurudh Karmakar (informant/father of the victim) PW1
- (ii) Victim PW2
- 6. 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.
- 7. I have heard the arguments advanced by the learned counsels for both the sides.
- 8. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.
- 9. PW1(informant/father of the victim) stated in his examination-in-chief that about 4 years back, one day, at about 7 PM, there was an altercation between his daughter(victim) and the accused person and out of misunderstanding, PW1 lodged an ejahar against the accused person in Dergaon PS. PW1 also stated that at the time of occurrence, his daughter(victim) was 19 years

old. During cross-examination, PW1 stated that except altercation, no other occurrence had taken place between his daughter(victim) and the accused person.

- 10. PW2 (victim) stated in her examination-in-chief that about 4 years back, one day, at about 7 PM, there was an altercation between her and the accused person and out of misunderstanding, her father(PW1) lodged an ejahar against the accused person in Dergaon PS. PW2 also stated that at the time of occurrence, she was 19 years. During cross-examination, PW2 stated that except altercation, no other occurrence had been taken place between her and the accused person.
- 11. From the aforesaid evidence on record, it transpires that both the witnesses, namely, PW1(informant/father of the victim) and PW2(victim) had clearly stated in their evidence that the victim was 19 years old at the time of occurrence and thus, the victim was major at the time of the incident. The prosecution also failed to show that the victim was a minor at the time of occurrence. As such, no offence under POCSO Act is attracted in this case.
- 12. Regarding the alleged offence of kidnapping by the accused person, the victim (PW2) herself admitted in her evidence that on the day of occurrence, only an altercation took place between her and the accused person and out of misunderstanding, her father(PW1) had lodged an ejajhar against the accused person in Dergaon PS. PW2 clearly stated her cross-examination that except altercation, no other occurrence had taken place between her and the accused person. Even the informant(father of the

victim), i.e., PW1 stated in his cross-examination that on the day of the occurrence, except altercation, no other occurrence had taken place between his daughter, i.e., victim(PW2) and the accused person. Thus, it is seen that the vital witnesses of the case did not support the prosecution story.

- 13. In view of the aforesaid discussion and reasons, I find and hold that the prosecution could not establish the charges u/s 366A IPC and section 8 of POCSO Act against the accused person. As such, accused Dharmeswar Nagbongshi is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of six months from today.
- 14. Given under my hand and seal of this Court on this 14^{th} day of **June**, 2019 at Golaghat.

(K. Hazarika)

Dictated & corrected by me,

Special Judge,

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

<u>Prosecution witness:</u>	
PW1 -Anurudh Karmakar(informant/father o	of the victim)
PW2 – Victim.	
Defence witness:	
Nil	
<u>Documents Exhibited by Prosecution :</u>	
Ext.l – Ejahar	
Material Exhibited by Prosecution:	
Nil.	
Defence Exhibit:	
Nil.	
	(K. Hazarika)

Special Judge, Golaghat.