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

## SPECIAL(POCSO) CASE NO.40/2018

U/S 366 of IPC R/W Sec.4 of POCSO Act
(Arising out of Golaghat PS Case No.115/16)

State

-vs-

Jayanta Nath.

.....Accused.

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

Special Judge, Golaghat.

### Advocates :-

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

For the accused : Mr. B. Talukdar,

Date of Argument : 30.04.19 Date of Judgment : 30.04.19

#### J U D G M E N T

1. The prosecution case in brief is that on 16.02.16, one Smti. Sunmoni Bora lodged an ejahar in Furkating Police Out Post stating inter-alia that while her daughter (victim) who was reading in Class X was coming from school, the accused kidnapped her over phone and on the same day, at about 8-30 PM, the victim

informed her through mobile No.9678660689 that the accused had forcefully taken her away.

- 3. On receipt of the ejahar, police registered a case being Golaghat PS Case No. 115/16 U/S 366A of IPC and entrusted SI Shankar Dayal to investigate the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 366/376 of IPC read with section 4 of POCSO Act, 2012.
- 4. When accused Jayanta Nath appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 366 IPC read with section 4 of POCSO Act was framed against the 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:**

- 9. (i) Whether the accused person on 16.02.16 at Chakordhora village under Golaghat PS kidnapped the 16 years old victim, daughter of the informant while she was coming from school forcefully 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 of IPC ?
- (ii) Whether the accused person committed penetrative sexual assault on the victim, 16 years old daughter of the informant after kidnapping her at Bokakhat and thereby committed an offence punishable u/s 4 of POCSO Act?

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

- 10. To bring home the charges against the accused person, the prosecution examined the following witnesses in the case:-
- (i) Smti. Sonmoni Bora(informant/ mother of the victim) PW1
- (ii) Victim PW2
- 11. The defence plea is of total denial. The defence did not adduce any evidence in the case. The accused person was not examined u/s 313 CrPC as there was no incriminating evidence against him.
- 12. I have heard the arguments advanced by the learned counsels for both the sides.
- 13. At the very outset, I would like to scrutinize the evidence on record for the purpose of adjudicating the charges against the accused person.
- 14. PW1(informant/mother of the victim) stated in her examination-in-chief that about two years back, one day, in the month of February, 2016, at about 8-30 PM, when she returned back home from her work, she found her daughter(victim) missing from her house and so, out of suspicion, she lodged an ejahar against the accused person in Furkating Police Out Post. During cross-examination, PW1 stated that her daughter (victim) came home on the next day and told her that she had gone to stay in one of her friend's house for the night without informing her or her husband and that the accused had not kidnapped her said daughter. PW1

further stated that she had only suspected that the accused had kidnapped her daughter and that the accused was not at all involved in the occurrence.

- 15. PW2 (victim) stated in her examination-in-chief that about 2 years back, one day, in the month of February, 2016, she went to stay in one of her friend's house without informing her parents and later when her mother returned home from her work and found her missing in her house, she suspected that the accused had kidnapped her and so, lodged an ejahar against the accused in Furkating Police Out Post. PW2 also stated that next day, in the morning, she returned home and told her parents that she went to stay in one of her friend's house on the previous day. During cross-examination PW2 stated that the accused did not kidnap her nor was at all involved in the occurrence. PW2 also stated that the accused had not committed any offence.
- 16. From the aforesaid evidence on record, it appears that the witness, namely, PW1(informant/mother of the victim) and PW2 (victim) clearly stated in their evidence that on the day of occurrence, PW2 went to stay in one of her friend's house without informing her parents and so, when PW1 returned home from her work and found PW2 missing from the house, PW1 lodged an ejahar against the accused person out of suspicion. PW2 clearly stated in her cross-examination that the accused did not kidnap her nor was at all involved in the occurrence and that the accused had not committed any offence. Even the informant(mother of the victim), i.e., PW1 stated in her cross-examination that her daughter(PW2) had told her that PW2 had gone to stay in one of

her friend's house for the night without informing her or her husband and that the accused had not kidnapped her daughter(victim). PW1 also stated that the accused person was not at all involved in the occurrence.

- 17. Thus, the evidence of both PW1 and PW2 reveals that the accused was not at all involved in the occurrence of this case. As per evidence of PW1(informant/mother of the victim), she had lodged the ejahar against the accused person out of suspicion only.
- 18. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charges u/s 366 of IPC and Section 4 of POCSO Act against the accused person. As such, accused Jayanta Nath is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of six months from today.
- 19. Given under my hand and seal of this Court on this  $30^{th}$  day of **April**, 2019 at Golaghat.

Dictated & corrected by me, (K. Hazarika)

Special Judge Golaghat.

(K. Hazarika) Special Judge,

Golaghat.

# **APPENDIX**

<u>Prosecution witness:</u>
PW1 – Sonmoni Bora (informant/mother of the victim)
PW2 - Victim
<u>Defence witness:</u>
Nil
Documents Exhibited by Prosecution:
Ext.1 – Ejahar
Ext.2 – Statement of victim recorded u/s 164 of Cr.P.C.
Material Exhibited by Prosecution:
Nil.
<u>Defence Exhibit</u> :
Nil.
(K. Hazarika)
Special Judge,
Golaghat.