DISTRICT: GOLAGHAT.

HEADING OF JUDGMENT IN SPECIAL CASES:

IN THE COURT OF THE SPECIAL JUDGE, GOLAGHAT.

Ref.:- Special (POCSO) Case No. 16/2018.

Arising out of G.R. Case No.2113/2014.

U/S 366(A) of IPC, read with Section 4 of POCSO Act.

Present :- Shri S. K. Sharma,

Special Judge, Golaghat.

The State of Assam. Prosecution.

-Vs -

Md. Imdad Ali. Accused.

APPEARANCE:

For the prosecution : Mr. P. Bora,

Special Public Prosecutor, Golaghat.

For the accused : Mr. R.P. Saikia,

Advocate, Golaghat.

Dates of evidence : 12.11.2018, 18.02.2019,

20.06.2019.

Date of argument : 04.03.2020.

Date of Judgment : 04.03.2020.

JUDGMENT:

1. The accused Md. Imdad Ali, son of Md. Butu Ali, resident of Islampatty, Golaghat Town, under Golaghat Police Station, District - Golaghat, Assam, here in this case, has been put to face the trial to answer the charges under section 366-A of IPC, read wit Section 4 of POCSO Act, 2012.

- 2. The fact as disclosed in the First Information Report is that on 04.11.2014, at about 10 a.m., in the morning, the daughter of the informant was missing from his house. Thereafter, the informant searched for his victim daughter, but could not find her out till night. The informant also alleged that he suspected that some person has kidnapped his victim daughter.
- 3. On receipt of the written ejahar from the informant Shri Sudhangshu Roy on 11.11.2014, the O/C of Ghiladhari Police Station registered the case being Ghiladhari P.S. Case No.95/2014, u/s 366(A) of IPC and himself investigate the case. During investigation, the I.O. visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. Thereafter, the I.O. recovered the victim girl and then got her examined by Doctor and collected the report. He also got the statement of the victim recorded in the Court. During investigation, the I.O. seized one school certificate of the victim girl. During investigation, the I.O. arrested the accused person and forwarded him to the Court. Then on completion of investigation, the I.O. submitted charge sheet against the accused u/s 366 of IPC, read with Section 4 of POCSO Act to stand trial in the Court.
- 4. On appearance of the accused person before this court, and after hearing learned counsels of both sides, my learned predecessor has framed charges against the accused under section 366(A) of IPC, read with Section 4 of POCSO Act and the contents of the charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. To bring home the charges against the accused, the prosecution side has examined as many as 6 witnesses including the M.O. and I.O. The defence examined none. The statement of the accused person has been recorded under the provision of section 313 of Cr.P.C. The plea of the accused is total denial.
- 6. I have heard Mr. P. Bora, the learned Special Public Prosecutor for the State and Mr. R.P. Saikia, learned counsel for the accused.

NOW THE POINTS FOR DETERMINATION ARE-

- 7. (i) Whether the accused on 04.11.2014, at about 10 A.M., in the morning, at Wpkha Garanga, under Ghiladhari Police Station, District Golaghat induced the victim girl under the age of eighteen years to go from her house with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with other and thereby, committed an offence punishable under section 366-A of IPC as alleged?
 - (ii) Whether the accused on 04.11.2014 and thereafter also committed penetrative sexual assault upon the victim child in his house and thereby, committed an offence punishable under Section 4 of POCSO Act as alleged?

DECISION AND REASONS THEREOF:

8. P.W.1 Shri Sudhangshu Roy is the informant of this case. His evidence reveals that the occurrence took place in the month of November, 2014 and on the day of occurrence, at about 10 P.M., at night, his victim daughter was missing form his house. Thereafter, they searched for his victim daughter, but could not succeed and then he lodged the ejahar. P.W.1 also deposed that at the time of occurrence, the age of his victim daughter was 18 years and prior to the occurrence, the victim had love affair with the accused. After four years of the occurrence, police recovered the victim and the accused. Now the victim and the accused are living as husband and wife alongwith their child. P.W.1 also deposed that later on, he came to know that the accused did not kidnap the victim and he also did not do any indecent act with her. Ext-1 is the ejahar and Ext-1(1) is his signature. Police also seized the school certificate of the victim by preparing seizure list. Ext-2 is the seizure list. At the time of occurrence, the victim was reading in Higher Secondary...

In cross examination, P.W.1 has stated that he has no objection, if the accused is acquitted from this case.

9. P.W.2 is the victim girl, who deposed in her evidence that the accused is her husband. The occurrence took place in the year 2014 and prior to the occurrence, she had love affair with the accused. P.W.2 also deposed that on the day of occurrence, she voluntarily elopped with the accused and stayed in a rented house of Santipur, Golaghat for about one month and thereafter, they went to Tezpur and stayed there for about one year and then again came to Golaghat and was stayed at Islampatty, Golaghat. When her father lodged the ejahar the police apprehended her and the accused. Thereafter, she gave her statement before the Court. Ext-2 is her statement and Ext-2(1) is her signature. Police got her examined by Doctor. P.W.2 further deposed that now she and the accused are living as husband and wife along with their child. At the time of occurrence, she was prosecuting her studies at Usha Garanga Higher Secondary School. At the time of occurrence, her age was more than 18 years. The accused also did not kidnap her. She does not want to proceed further with the case.

In cross examination, P.W.2 has stated that she has no objection, if the accused is acquitted from this case.

- 10. P.W.3 Dr. Jesmin Begum has deposed in her evidence that on 03.04.2018, she was working at S.K.K. Civil Hospital, Golaghat as Sub-Divisional Medical & Health Officer. On that day, she examined the victim girl, aged about 20 years of village Usha Garanga, under Ghiladhari Police Station, District Golaghat in reference to Ghiladhari P.S. Case No.95/2014 vide Emergency Registration No.351/18, on being escorted and identified by WHG Smti. Subhadra Saikia and after examination, the Doctor, P.W.3 has opined that the age of the girl is above 18 years. Accordingly, she issued Ext-3 the medical examination report and Ext-3(1) is her signature.
- 11. P.W.4 Smti. Mina Roy has deposed in her evidence that she knows both the accused and the informant. She heard that about 5/6 years back, the daughter of the informant elopped with the accused person. Now, the accused and

the victim are living as husband and wife.

- 12. P.W.5 Shri Sanjoy Ray has deposed in his evidence that the victim is her niece. In the year 2014, the victim elopped with the accused. Thereafter, the informant lodged the ejahar and then police recovered the victim. Now, the accused and the victim are living as husband and wife.
- 13. 17. P.W.6 Shri Padma Kanta Das is the I.O. of this case. His evidence reveals that on 12.11.2014, he was working as Officer In-charge at Ghiladhari Police Station. On that day, the informant Shri Sudhangshu Roy has lodged an ejahar before the Police Station and on receiving the ejahar, he registered the case vide Ghiladhari P.S. Case No.95/2014, u/s 366(A) of IPC and he himself investigated the case. During investigation, he visited the place of occurrence, examined witnesses and he also prepared sketch map of the place of occurrence. Ext-5 is the sketch map and Ext-5(1) is his signature. P.W.6 also deposed that in the mean time, he got his transfer order and thereafter, his predecessor I.O. Shri Phani Madhab Saikia investigated the remaining part of investigation of the case. During investigation, I.O. Shri Phani Madhab Saikia got the victim examined by Doctor and collected the report and he also got the statement of the victim recorded in the Court. I.O. Shri Phani Madhab Saikia also seized the school certificate of the victim by preparing seizure list. Ext-2 is the seizure list and Ext-2(1) is the signature of Shri Phani Madhab Saikia. Then on completion of investigation, I.O. Shri Phani Madhab Saikia laid charge sheet against the accused u/s 366 of IPC, read with Section 4 of POCSO Act. Ext-6 is the charge sheet and Ext-6(1) is the signature of Shri Phani Madhab Saikia.
- 14. Thus, from the evidence of the P.W.1 informant and P.W.2 victim, it appears to be clearly a case of voluntary elopement arising out of a love affair between the accused and victim, who is above 18 years of age. There is no element of inducement or force and neither is any ingredients of penetrative sexual assault been established. Hence, prosecution has not been able to establish its case under Section 366-A of IPC, read with Section 4 of POCSO Act.

Consequently, accused Imdad Ali is acquitted of the said offences and set at liberty forthwith. His bail bond stands extended by further six months from today.

Given under my hand and seal of the Court on this the 4^{th} day of March, 2020.

(S. K. Sharma) Special Judge, Golaghat.

Dictated & Corrected by me.

Special Judge, Golaghat.

APPENDIX:

WITNESSES FOR THE PROSECUTION:

- 1. P.W.1 Shri Sudhangshu Roy.
- 2. P.W.2 The victim girl.
- 3. P.W.3 Dr. Jesmin Begum, M.O.
- 4. P.W.4 Shri Mira Roy.
- 5. P.W.5 Shri Sanjoy Roy.
- 6. P.W.6 Shri Padma Kanta Saikia, I.O.

WITNESSES FOR THE DEFENCE : Nil.

EXHIBITS FOR THE PROSECUTION:

- 1. Ext-1 Ejahar.
- 2. Ext-2 Statement of the victim recorded u/s 164 of Cr.P.C.
- 3. Ext-3 Medical examination report of the victim.
- 4. Ext-4 Seizure list.
- 5. Ext-5 Sketch map of the place of occurrence.
- 6. Ext-6 Charge sheet.

EXHIBITS FOR THE DEFENCEN: Nil.

Special Judge, Golaghat.