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

SPECIAL (POSCO) CASE NO.16/2019

U/S 363 of IPC R/W Sec.8 of POCSO Act.
(Arising out of Bogijan PS Case No.09/19)

State -vs-

Sri Lakhinda 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. M.K. Buragohain

Date of Argument : 05.07.19
Date of Judgment : 05.07.19

J U D G M E N T

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution is that one Renu Kalita lodged an ejahar in Bogijan PS stating inter-alia that she came to know from reliable source that accused Lakhinda Das took her 14 years old daughter, i.e., the victim studying in Class IX from the road while she was going to school.
- 2. On receipt of the FIR, the Officer-in-Charge, Bogijan PS registered a case being Bogijan PS Case No.09/19 U/S 366 IPC and endorsed ASI Ranjit Saikia to investigate into the case. After completion

of investigation, police submitted charge-sheet against the accused person u/s 366 IPC read with section 8 of POCSO Act.

- 3. When the charge-sheet was laid before the court of the learned Chief Judicial Magistrate, Golaghat, the said learned Court vide order dated 08.04.19 forwarded the case record to the Court of the Special Judge, Golaghat as the offence u/s 8 of POCSO Act was exclusively triable by the Special Judge.
- 4. After going through the police report u/s 173 CrPC and after hearing both the sides, having found a prima facie case, charge was framed against the accused person by this Court against the accused person u/s 363 IPC read with section 8 of POCSO Act. The accused person pleaded innocence when the charge was read over and explained to him and claimed for trial.

POINTS FOR DETERMINATION:

- 5. (i) Whether the accused person kidnapped the victim, the 14 years old daughter from the lawful guardianship of her mother, Smti. Renu Kalita from the road while she was going to school and thereby committed an offence punishable u/s 363 IPC?
- (ii) Whether the accused person after kidnapping the victim, the 14 years old daughter of Smti. Renu Kalita, touched her with sexual intent which involved physical contact without penetration 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 ass many as 3(three) witnesses in the case and the victim was examined as court witness. They are as follows:-

(i) Smti. Renu Kalita (informant/mother of victim) -PW1

(ii) Sri Tileswar Gogoi(father of informant) -PW2

(iii) Smti. Mina Hazarika(cousin of informant) - PW3

-PW4

(iv) Smti. Anima Neog

(v) Victim -CW1.

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. CW1 (victim) in her examination-in-chief stated that about 5 months back, one day, she had gone to the house of her friend, namely, Janmoni Tamuli without informing her mother from school and out suspicion, her mother, Renu Kalita lodged an ejahar against the accused person in Bogijan PS. CW1 also stated that at the time of the occurrence, her age was 20 years. During cross-examination, CW1 stated that the accused person neither kidnapped her nor did anything with her on the date of the occurrence.
- 11. PW1(informant) in her examination-in-chief stated that one day, in the last part of January, 2019 when her daughter i.e., the victim did not return home from school, out of suspicion, she lodged an ejahar against accused Lakhinda Das in Bogijan PS and that after one hour of lodging the ejahar, her daughter, i.e., the victim returned home and told her that she had gone to her friend's house, i.e., Janmoni Tamuli's house and that at the time of the occurrence, the age of the victim was 20 years. During cross-examination, PW2 stated that the accused person did not kidnap her

daughter, i.e., the victim.

- 12. PW2(father of the informant) stated in his examination-in-chief that he only knew that his daughter, Renu Kalita had lodged a case but he did not know against whom she had lodged that case.
- 13. PW3 and PW4 stated in their examination-in-chief that they did not know anything about the occurrence.
- 14. Thus, from the aforesaid evidence on record, it transpires that none of the witnesses including the informant and the victim implicated the accused person with the alleged offence as stated in the ejahar. In fact, the victim (CW1) had only testified in her evidence that on the day of occurrence, she went to the house of her friend, namely, Janmoni Tamuli without informing her mother from school and out of suspicion, her mother, Renu Kalita lodged an ejahar against the accused person in Bogijan PS and that at the time of occurrence, her age was 20 years. CW1 clearly stated in her cross-examination that the accused person neither kidnapped her nor did anything with her on the day of the occurrence.
- 15. Close on the heels of the evidence of CW1, PW1(mother of the victim/informant) testified in her evidence that on the day of occurrence, when her daughter(victim) did not return home from school, out of suspicion, she lodged an ejahar against accused Lakhinda Das in Bogijan PS and that after one hour of lodging of the ejahar, the victim returned home and told her that she had gone to her friend's house, i.e. Janmoni Tamuli's house. PW1 also stated that at the time of the occurrence, the age of victim was 20 years. During cross-examination, PW1 stated that accused did not kidnap her daughter(victim). Both CW(victim) and PW1(informant) clearly stated in their evidence that the victim(CW1) was 20 years old at the time of occurrence. Thus, it has become amply 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 by adducing any sort of evidence, be it oral or documentary. As such, no offence under the POCSO Act is made out in this case. The other witnesses of the case, namely, PW3 and PW4 expressed their complete ignorance about the alleged occurrence in their evidence. PW2 only deposed that he knew that his daughter, Renu Kalita had lodged a case but he did not know against whom she had lodged that case. Therefore, the said evidence on record do not at all support the prosecution case.

- 16. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 363 IPC read with section 8 of POCSO Act against the accused person. As such, accused Lakhinda 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 birth certificate of the victim to informant, Renu Kalita after due verification in accordance with law.
- 18. Given under my hand and seal of this Court on this 5^{th} day of **July**, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

Prosecution witness:

PW1 Renu Kalita (informant/mother of victim)	
PW2 Tileswar Gogoi(father of informant)	
PW3 Mina Hazarika(cousin of informant)	
PW4 Anima Neog	
<u>Defence witness:</u>	
Nil.	
Court Witness:	
CW1 – Victim.	
Documents Exhibited by Prosecution:	
Ext.1 Ejahar	
Ext.2 Statement of the victim recorded u/s 164 CrPC.	
Material Exhibited by Prosecution:	
Nil.	
Defence Fuhikit	
Defence Exhibit:	
Nil.	
(1	K. Hazarika)
Sı	pecial Judge,
	Golaghat.