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

SPECIAL(POCSO) CASE NO.42/2018

U/S 6 of POCSO Act

(Arising out of Uriamghat PS Case No.48/18)

State

-vs-

Sher Shah Ali

.....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. J. K. Goswami.

Evidence recorded on : 06.05.19 Argument heard on : 06.05.19 Judgment delivered on : 06.05.19

JUDGMENT

1. For the sake of skipping expatiation, the encapsulated version of the prosecution case is that on 13.07.18, one Musstt. Jomila Khatun lodged an ejahar in Uriamghat PS stating inter-alia that due to domestic problems, she had been living separately in her paternal house away from the accused person who was her husband and her 15 years old daughter (victim) used

to stay with the accused and since last several years and that since few days back as the victim was calling her, on 13.07.18, she went to her son's house situated at No.1 Madhupur village and when she met her daughter there, the victim(daughter) informed her that since few moths back, her husband, that is, the accused person had been sexually torturing her and forcefully raping her and she became pregnant of 4 months then and threatened her that he would kill her if she told about the occurrence to anyone else.

- 2. On receipt of the ejahar, police registered a case being Uriamghat PS Case No. 48/18 U/S 4 of POCSO Act and entrusted ASI M Duwarah to investigate the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 4 of POCSO Act, 2012.
- 3. When accused Sher Shah Ali appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 6 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.

POINT FOR DERMINATION:

4. (i) Whether the accused person about 5/6 months prior to 13.07.2018 at No.1 Madhupur village under Uriamghat PS committed aggravated penetrative sexual assault on the child victim who was his own daughter as well as the daughter of his wife/informant Mustt. Jomila Khatun, more than once, resulting in

her pregnancy and thereby committed an offence punishable u/s 6 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

- 5. To bring home the charge against the accused person, the prosecution examined the following witnesses in the case:-
- (i) Musstt. Jomila Khatun (informant/mother of the victim) PW1
- (ii) Victim PW2
- 6. 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.
- 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 charge against the accused person.
- 9. PW1(informant/mother of the victim) stated in her examination-in-chief that about 9/10 months back, one day, her daughter (victim) told her that an alteration took place between her and her father who is the accused person in this case and out of anger, her daughter (victim) brought allegation against the accused that he had committed rape on her and that out of anger she lodged an ejahar against the accused person in Uriamghat PS. PW1 also deposed that later on, she came to know that the allegation levelled

by her daughter(victim) was not correct and everything was false and that her daughter(victim) had physical relationship with may boys. It was also stated by PW1 that her daughter(victim) had confessed before her that the accused was no way involved in the occurrence. During cross-examination, PW1 stated that at the time of occurrence, the age of her daughter(victim) was above 19 years and that out of misunderstanding, she lodged the ejahar against her husband(accused) and that the accused was not at all involved in the occurrence.

- 10. PW2 (victim) stated in her examination-in-chief that about 10 months back, one day, at about 7 PM, an alteration took place between her and her father(accused) as he had caught her red-handed with a boy named Najrul while having physical relationship with him and so, out of revenge, she brought allegation against her father (accused) that he had committed rape on her and accordingly, she told her mother falsely alleging that her father had committed rape on her. PW2 further stated that in fact the accused did not commit rape on her and that out of misunderstanding, her mother (PW1) lodged an ejahar against the accused in Uriamghat PS and that at the time of occurrence, her age was above 19 years. PW2 also stated that as her father/accused had rebuked her at the time of alteration, she falsely stated in her statement recorded u/s 164 CrPC that the accused had committed rape on her which was actually not true. During cross-examination, PW2 stated that the accused was not at all involved in the occurrence.
- 11. From the aforesaid evidence on record, it transpires that the informant/mother of the victim (PW1) testified in her

evidence that on the day of occurrence, her daughter(victim) told her that an alteration took place between her and her father(accused) and out of anger, her daughter(victim) brought allegation against the accused and that the accused had committed rape on her and out of anger she (PW1) lodged an ejahar against the accused person in Uriamghat PS. PW1 also stated that she came to know the allegation levelled by her daughter (victim) was not correct and everything was false and that her daughter(victim) had physical relationship with many boys. PW1 further stated that her daughter(victim) had confessed before her that the accused was no way involved in the occurrence. Interestingly, PW2(victim) testified in her evidence that on the day of occurrence, alteration took place between her and her father (accused) as he had caught her redhanded with a boy named Nazrul while having physical relationship with him and out of revenge, she brought allegation against her father (accused) that he had committed rape on her and that in fact, accused did not commit rape on her and out of misunderstanding, her mother (PW1) lodged an ejahar against the accused person. During cross-examination, PW2(victim) clearly stated that the accused was not at all involved in the occurrence. Besides that, both PW1 and PW2 testified in their evidence that PW2(victim) was above 19 years old at the time of occurrence. Thus, it is seen that both the informant(PW1) and the victim (PW2) clearly deposed in their evidence that the accused was not involved in the occurrence and that out of revenge and anger, PW2(victim) had brought the allegation against the accused. Such evidence of the prime witnesses, namely, the informant (PW1) and the victim(PW2) totally shattered the whole prosecution case and makes the prosecution story not believable.

- 12. In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge under Section 6 of POCSO Act against the accused person. As such, accused Sher Shah Ali is acquitted and set at liberty forthwith. His bail bond shall remain in force for a period of six months from today.
- 13. Given under my hand and seal of this Court on this 6^{th} day of May, 2019 at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

<u>Prosecution witness:</u>
PW1 -Musstt. Jomila Khatun (informant/mother of the victim)
PW2 – Victim
Defence witness:
Nil
Documents Exhibited by Prosecution:
Ext.1 – 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.