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

SPECIAL POCSO CASE NO.22/2019.

U/S 4 of the POCSO Act.
(Arising out of Bogijan P.S. case No.49/15)

State

-VS-

Sri Bidyadhar Guwala.

..... Accused person.

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

Special Judge,

Golaghat.

Appearance :-

For the State : Mr. P. Bora, Special P.P. For the accused : Mr. J. Bhuyan, Advocate.

Date of Argument : 16.11.19.

Date of Judgment : 16.11.19.

JUDGMENT

1. The prosecution case in a nutshell is that on 17.11.15, one Mohan Urang lodged an ejahar in Bogijan P.S. stating interalia that on 12.11.15, at about 10 pm at Shyamraipur T.e. when his sister(victim), aged about 15 years was watching cinema in the playground of Shyamraipur T.E. and went outside the playground to attend to her natural call, accused Bidyadhar Guwala gagged her mouth from

backside and took her towards the tea garden and after tearing her wearing apparels forcefully tried to commit rape upon her.

- 2. On receipt of the ejahar, the Officer-in-charge of Bogijan P.S. registered a case being Bogijan P.S. case No.49/15 U/s 18 of the POCSO Act and endorsed SI. Rajib Gohain to investigate into the case. After completion of investigation, police submitted charge sheet against the accused person U/S 4 of the POCSO Act.
- 3. When the accused person appeared before the Court, necessary copies were furnished to him and after hearing both the sides, charge U/S Section 4 of the POCSO Act was framed against accused Bidyadhar Guwala 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 DETERMINATION:

Whether the accused person on 12.11.15 at about 10 pm at Shyamraipur T.E. outside the playground under Bogijan P.S. committed penetrative sexual assault upon the victim and thereby committed an offence punishable u/s 4 of the POCSO Act ?

- 4. To bring home the charge against the accused person, the prosecution side examined as many as 4(four) witnesses in the case and they are as follows:-
 - (i) Sri Mohan Urang (informant/elder brother of the victim) PW1.
 - (ii) Victim PW2.
 - (iii) Smt. Sumi Urang (younger sister of informant) PW3.
 - (iv) Sri Samru Lohar PW4.

- 5. The defence plea is of total denial. The defence did not adduce any evidence. The accused person was examined U/S 313 Cr.P.C.
- 6. I have heard arguments of the learned counsels for both the sides. I have also gone through the entire evidence on record.
- 7. 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:

- 8. PW1(informant/elder brother of the victim) stated in his examination-in-chief that about 4 years back, one day, at about 12 midnight/1 am, when his younger sister(victim) was watching a movie in the tea garden field, on the night of Kali Puja, the accused person teased her and out of misunderstanding, he lodged an ejahar against the accused person.
- 9. PW2(victim) stated in her examination-in-chief that about 4 years back, one day, at about 12 midnight, when she was watching movie in the tea garden field on the night of Kali Puja, the accused person teased her and so, when she told about the occurrence to her elder brother, Mohan Urang, he lodged an ejahar against the accused person in Bogijan P.S. During cross-examination PW2 stated that she did not know whom the accused person had teased.
- 10. PW3(younger sister of the informant) and PW4 stated in their evidence that they did not know anything about the occurrence.
- 11. From the aforesaid evidence on record, it transpires that both the informant(PW1) and the victim(PW2) testified in their evidence about the accused person only teasing PW2 on the night of occurrence and nothing else. Besides that PW3 and PW4 expressed their ignorance about the alleged occurrence. Thus, it is seen that the witnesses did not utter anything about the commission of any offence u/s 4 of the POCSO Act. Both PW1 and the PW2 being the informant and

the victim respectively did not support the prosecution case and could not prove the contents of the ejahar.

- 12. In view of the above discussions and reasons, I find and hold that prosecution could not establish the charge U/S 4 of the POCSO Act against the accused person. As such, accused Bidyadhar Guwala is acquitted and set at liberty. The bail bond of the accused person shall remain in force for a period of 6 months from today.
- 13. Given under my hand and seal of this Court on this 16th day of November, 2019.

Dictated & corrected by me:

(K. Hazarika) Special Judge, Golaghat. (K. Hazarika) Special Judge, Golaghat.

APPENDIX

Prosecution witnesses :-
PW1- Sri Mohan Urang(informant/elder brother of the victim),
PW2- Victim,
PW3- Smt. Sumi Urang(younger sister of informant)
PW4-Sri Samru Lohar.
<u>Defence witness</u> :-
Nil
<u>Documents Exhibited by Prosecution</u> :-
Ext.1 -Ejahar.
Ext.2 Statement of victim u/s 164 CrPC
Material Exhibited by Prosecution :-
Nil.
<u>Defence Exhibit</u> :-
Nil.
(K. Hazarika)
Special Judge,
Golaghat.