

SPECIAL POCSO CASE NO.66/2019.

U/S 366 IPC r.w. Section 6 of the POCSO Act. (Arising out of Ghiladhari P.S. case No.45/17)

State

-VS-

Sri Dhanti Bora

..... Accused.

Present: Sri K. Hazarika, AJS,

Special Judge, Golaghat.

Appearance :-

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

For the accused : Mr. M. K. Buragohain, Advocate.

Argument heard on : 30.01.2020.

Judgment delivered on : 30.01.2020.

J U D G M E N T

- 1. The prosecution case in a nutshell is that on 18.05.2017, one Chenai Bora lodged an ejahar in Ghiladhari P.S. stating inter alia that on that day at about 3 pm he accused person kidnapped his daughter (victim) from Habichukia gaon under Ghiladhari P.S. in a Trekker.
- 2. On receipt of the ejahar, the O/C of Ghiladhari P.S. registered a case being Ghiladhari P.S. Case No.45/17, U/S 366 IPC and endorsed ASI Tapeswar Das to take pre-step of the investigation and endorsed himself to complete the investigation of the case. After completion of investigation, police submitted charge sheet against the accused person U/S 366 IPC read with Section 4 of the POCSO Act, 2012.
- 3. When the accused person appeared before the Court, necessary copies were furnished to him and after hearing both the sides, charge U/S 366 IPC read with

Section 6 of the 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 DETERMINATION:

- (i) Whether the accused person on 18.05.2017 at about 3 pm, kidnapped the victim, a minor girl from Habichukia gaon under Ghiladhari P.S. 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 366 IPC?
- (ii) Whether the accused on the aforesaid date and thereafter, committed aggravated penetrative sexual assault on the victim, a minor girl more than once/repeatedly and thereby committed an offence punishable U/S 6 of the POCSO Act?

DISCUSSION, DECISIOIN AND REASONS THEREOF:

4. To bring home the charge the prosecution side examined as many as 5(five) PWs and one CW and they are as follows:-

(i)	Sri Deben Bora(paternal uncle of victim)	PW1,
(ii)	Sri Putul Bora(paternal uncle of victim)	PW2,
(iii)	Sri Ganesh Bora	PW3,
(iv)	Sri Phanidhar Gogoi	PW4,
(v)	Sri Chenai Bora(informant/father of the victim)	PW5,
(vi)	Victim	CW1.

- 5. The defence plea is of total denial. The defence did not adduce any evidence in the case. The accused was not examined U/S 313 Cr.P.C. as there was no incriminating evidence against him.
- 6. I have heard the 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 charge against the accused person.
- 8. PW1, PW2, PW3 and PW4 stated in their examination-in-chief that they did not know anything about the occurrence.
- 9. PW5 (informant/father of victim) in his examination-in-chief stated that about 3 years back, one day, he got information that his daughter(victim) who was staying since childhood in her maternal uncle, Nino Bora's house after the death of her mother i.e. his wife, was married off to the accused person and out of misunderstanding he lodged an ejahar against the accused person in Ghiladhari P.S. PW5 also stated that at the time of occurrence, the age of his daughter(victim) was 19 years. During cross-examination PW5 stated that presently his daughter, the victim and the accused person were staying as husband and wife.
- 10. CW1(victim) in her examination-in-chief stated that about three years back, one day, she voluntarily eloped with accused Dhanti Bora for which her father, Chenai Bora lodged an ejahar against accused Dhanti Bora in Ghiladhari P.S. and that at the time of occurrence she was staying in her maternal uncle, Nino Bora's house and at that time her age was 19 years. During cross-examination CW1 stated that the accused did not forcefully abduct her on the date of occurrence and that she, herself, on her own had eloped with the accused person as they were in love with each other.
- 11. From the aforesaid evidence on record, it transpires that none of the witnesses including the informant and victim implicated the accused with the alleged occurrence. PW5(informant/father of victim) testified in his evidence that getting information of his daughter(victim) married off to the accused, he lodged ejahar out of misunderstanding. CW1(victim) clearly testified that she voluntarily eloped with the accused. Both PW5 and CW1 deposed that the age of the victim(CW1) was 19 years at the time of occurrence. So, it appears that the victim was a major girl then and so, no offence under the POCSO Act is attracted. Again, the offence u/s 366 IPC also not attracted as the victim had deposed that she on her own volition had eloped with the accused. Thus, the evidence of the vital witnesses did not support the prosecution case. On the other hand, the paternal uncles of the victim, viz, PW1 and PW2 along with PW3 and PW4 expressed their ignorance about the alleged occurrence.

- 12. In view of the aforesaid discussions and reasons, I find and hold that prosecution could not establish the charges u/s 366 IPC r.w. Section 6 of the POCSO Act against the accused person. As such, accused Dhanti Bora is acquitted and set at liberty forthwith. 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 30th day of January, 2020.

Dictated & corrected by me:

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