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

SPECIAL (POSCO) CASE NO.39/2019

U/S 363 IPC R/W Sec. 8 of POCSO Act.
(Arising out of Merapani PS Case No.72/17)

State -vs-Sri Maina Gogoi

......Accused person.

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

<u> Appearance :-</u>

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

For the accused: Mr. R. Saikia

Date of Argument : 07.01.2020 Date of Judgment : 07.01.2020

J U D G M E N T

1. For the sake of skipping expatiation, the encapsulated version of the prosecution is that one Smti. Saru Das lodged an ejahar in Merapani PS on 22.04.17 stating inter-alia that on that day, at about 8-45 AM, the accused person along with Raju Saikia kidnapped her daughter(victim) aged about 15 years from the road on a scooty bearing registration No. AS-05 H 8384 while her daughter(victim) was going to Merapani Girls school.

- 2. On receipt of the FIR, the Officer-in-Charge, Merapani PS registered a case being Merapani PS Case No.72/2017 U/S 363/34 IPC and endorsed himself, i.e., SI Purna Kanta Das to investigate into case. After completion of investigation, police submitted charge-sheet against the accused Maina Gogoi only u/s 363 IPC read with Sec. 8 of POCSO Act.
- 3. When the accused Maina Gogoi appeared before the court, necessary copies were furnished to him and after hearing both the sides, charge u/s 363 IPC read with sec. 8 of POCSO Act was framed against 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 on 22.04.17 at about 8.45 AM at Mikirpatty Udaypur gaon under Merapani PS kidnapped the victim, a minor girl of 15 years from the lawful guardianship of her parents and thereby committed an offence punishable u/s 363 IPC?
- (i) Whether the accused person on the aforesaid date, time and place committed sexual assault upon the victim, a minor girl by touching her with sexual intent which involved physical contact without penetration and thereby committed an offence punishable u/s 8 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF:

4. To bring home the charge against the accused person, the prosecution side examined as many as 4(four) witnesses in the case and one witness was examined as court witness and they are as follows:-

(i) Md. Habibur Rahman	-PW1
(ii) Sri Jitul Saikia	-PW2
(iii)Sri Diganta Saikia	- PW3
(iv)Smti. Saru Das(informant/mother of victim)	- PW4
(v)Victim	-CW1

- 5. 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.
- 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 charges against the accused person.
- **8.** PW1 stated in his examination-in-chief that he did not know anything about the occurrence.
- 9. PW2 stated in his examination-in-chief that he did not know anything about the occurrence and that police had seized one scooty belonging to Diganta Saikia and as police had instructed him to put his signature on the seizure list, he had put his signature therein.
- 10. PW3 stated in his examination-in-chief that he did not know anything about the occurrence and that police had seized one scooty belonging to him and that he did not know why his scooty was seized by police and though he had asked the Officer-in-Charge as to why his scooty was seized, he did not say anything to him and that as police had instructed him to put his signature on the seizure list, he had put his signature therein.
- 11. PW4(informant/mother of victim) stated in her examination-in-chief that about 2 years back, one day, at about 8/9 AM, there was an altercation between his daughter(victim) and the accused person and out of misunderstanding, she lodged an ejahar against the accused person in Merapani PS and that at the time of occurrence, the age of her

daughter(victim) was 18 years.

- 12. CW1 (victim) stated in her examination-in-chief that about 2 years back, one day, at about 8/9 AM, there was an altercation between her and the accused person and out of misunderstanding, her mother, Smti. Saru Das lodged an ejahar against the accused person in Merapani PS and that at the time of occurrence, her age was 18 years
- 13. From the aforesaid evidence on record, it transpires that all the witnesses including the informant and the victim did not implicate the accused person with the alleged occurrence as stated in the ejahar. Both PW4(informant/mother of the victim) and CW1 (victim) clearly testified in their evidence that there was an altercation between CW1 and dthe accused person and out of misunderstanding, PW4 lodged an ejahar against the accused. Besides that, the other witnesses of the case, viz, PW1, PW2 and PW3 expressed their ignorance about the alleged occurrence in their evidence. Both PW4 and CW1 testified that at the time of occurrence, the age of the victim girl was 18 years. Thus, it has become 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 at the time of occurrence by adducing any sort of evidence, be it oral or documentary. As such, no offence under the POCSO Act is attracted in this case. Thus, it is seen that the witnesses did not support the prosecution story and the contents of the ejahar.
- 14, In view of the aforesaid discussions and reasons, I find and hold that the prosecution could not establish the charge u/s 363 IPC read with sec. 8 of POCSO Act against the accused person. As such, accused Maina Gogoi is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.
- 15. The seized scooty and its relevant documents be returned to its

registered owner after due verification in accordance with law.

Given under my hand and seal of this Court on this 7th day of **January**, **2020** at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

APPENDIX

Prosecution witness:

PW1 Md. Habibur Rahman	
PW2 Sri Jitul Saikia	
PW3 Diganta Saikia	
PW4 Smti. Saru Das(informant/mother of victim)	
CW1 Victim.	
<u>Defence witness</u> :	
Nil	
Documents Exhibited by Prosecution:	
Ext.1 Seizure list	
Ext.2 Ejahar	
Ext.3 Statement recorded u/s 164 CrPC	
Material Exhibited by Prosecution:	
Nil.	
<u>Defence Exhibit</u> :	
Nil.	
	(V Honeville)
	(K. Hazarika)
	Special Judge
	Golaghat.