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

# SPECIAL(POCSO) CASE NO.26/2018 U/S 342/366A of IPC R/W Sec.4 of POCSO Act (Arising out of Ghiladhari PS Case No.46/18)

State

-**v**s-

Sri Bhaity Tanti @ Ekalabya

......Accused.

<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. N. Borah

Date of argument : 15.06.19

Date of Judgment : 15.06.19

## <u>JUDGMEN</u>T

1. The prosecution case in brief is that on 17.07.18, one Gita Mirdha lodged an ejahar in Ghiladhari PS stating inter-alia that on 06.07.18, at night, the accused person somehow took her daughter(victim) from her house persuading to marry her and had sexual intercourse with her and since then, the accused person had

confined her daughter in his house and somehow on the date of filing of the FIR, her daughter (victim) fled away from the clutches of the accused person and returned back to the house and told them about the sexual intercourse done upon her by the accused person.

- 2. On receipt of the ejahar, police registered a case being Ghiladhari PS Case No.46/18 U/S 366 of IPC read with section 4 of POCSO Act and the Officer-in-Charge of Ghiladhari PS entrusted himself to investigate into the case. After completion of investigation, police submitted charge-sheet against the accused person u/s 366/342 of IPC read with section 4 of 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 342/366A IPC read with section 4 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 DERMINATION:**

- 4. (i) Whether the accused on 06.07.18 at Pucca Line of Makranga TE under Ghiladhari PS, wrongfully confined the victim, daughter of the informant and thereby committed an offence punishable u/s 342 of IPC?
- (ii) Whether the accused on the aforesaid date, and place at night induced the victim, a minor girl of 16 years, to go from her house situated at Hatkhula line of Makrang Tea Garden to Pucca line of said tea garden with intent that she may be or knowing that

it is likely that she will be forced to illicit intercourse by the accused and thereby committed an offence punishable u/s 366A IPC?

(iii) Whether the accused on the aforesaid date, at Pucca Line of Makrang tea garden under Ghiladhari PS committed penetrative sexual assault upon the victim and thereby committed an offence punishable u/s 4 of POCSO Act?

#### **DISCUSSION, DECISION AND REASONS THEREOF:**

- 5. To bring home the charges against the accused person, the prosecution examined only two witnesses, namely, the following witnesses in this case.
- (i) Smti. Gita Mirdha (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 this 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 charges against the accused person.
- 9. PW1(informant/mother of the victim) stated in her examination-in-chief that about one year back, one day, at about 7

AM, there was an altercation between her daughter(victim) and the accused person and out of misunderstanding, PW1 lodged an ejahar against the accused person in Ghiladhari PS. PW1 also stated that at the time of occurrence, his daughter(victim) was 19 years old. During cross-examination, PW1 stated that except altercation, no other occurrence had taken place between her daughter(victim) and the accused person.

- 10. PW2 (victim) stated in her examination-in-chief that about one year back, one day, at about 7 AM, there was an altercation between her and the accused person and out of misunderstanding, her mother(PW1) lodged an ejahar against the accused person in Ghiladhari PS. PW2 also stated that at the time of occurrence, her age was 19 years. During cross-examination, PW2 stated that except altercation, no other occurrence had taken place between her and the accused person.
- 11. From the aforesaid evidence on record, it transpires that both the witnesses, namely, PW1(informant/mother of the victim) and PW2(victim) had clearly stated in their evidence that the victim(PW2) was 19 years old at the time of occurrence and thus, the victim is found to be major at the time of the incident. The prosecution also failed to show that the victim was a minor at the time of occurrence. As such, no offence under POCSO Act is attracted in this case.
- 12. Regarding the alleged offence of kidnapping and confinement by the accused person, the victim (PW2) herself admitted in her evidence that on the day of occurrence, only an

altercation took place between her and the accused person and out of misunderstanding, her mother(PW1) had lodged an ejahar against the accused person in Ghiladhari PS. PW2 clearly stated in her cross-examination that except altercation, no other occurrence had taken place between her and the accused person. Even the informant(mother of the victim), i.e., PW1 stated in her crossexamination that on the day of the occurrence, except altercation, no other occurrence had taken place between her daughter, i.e., victim(PW2) and the accused person. Thus, it is seen that the vital witnesses of the case did not support the prosecution story.

- 13. In view of the aforesaid discussion and reasons, I find and hold that the prosecution could not establish the charges u/s 342/366A IPC and section 4 of POCSO Act against the accused person. As such, accused Bhaity Tanti @ Ekalabaya is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.
- 14. Given under my hand and seal of this Court on this 15th day of June, 2019 at Golaghat.

(K. Hazarika)

Dictated & corrected by me,

Special Judge,

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

# APPENDIX

Prosecution witness:
PW1 -Smti. Gita Mirdha(informant/mother of the victim)
PW2 – Victim.
<u>Defence witness:</u>
Nil.
<b>Documents Exhibited by Prosecution:</b>
Nil.
Material Exhibited by Prosecution:
Nil.
<u>Defence Exhibit</u> :
Nil.
(K. Hazarika)
Special Judge

Golaghat.