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

## SPECIAL (POSCO) CASE NO.23/2019

U/S 6 of POCSO Act.

(Arising out of Golaghat PS Case No.472/18)

State

-vs-

Sri Moni Garh

......Accused person.

Present: Sri K. Hazarika, AJS

Special Judge, Golaghat.

#### <u>Appearance :-</u>

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

For the accused : Mr. J. Bhuyan

Date of Argument : 27.01.2020
Date of Judgment : 27.01.2020

#### J U D G M E N T

- 1. For the sake of skipping expatiation, the encapsulated version of the prosecution is that one Mithun Warly lodged an ejahar in Numaligarh Police Out Post under Golaghat PS on 01.07.18 stating inter-alia that the accused person had been maintaining physical relationship with his minor daughter(victim) of 16 years as a result of which she had become pregnant of 7 months.
- 2. On receipt of the FIR, the Officer-in-Charge, Golaghat PS

registered a case being Golaghat PS Case No.472/18 U/S 376 IPC read with sec.4 of POCSO Act and endorsed SI Tulan Ch. Das to investigate into case. After completion of investigation, police submitted charge-sheet against the accused person u/s 376 IPC read with Sec. 6 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 6 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:**

Whether the accused person prior to several months of filing of the ejahar on 01.07.2018 at Dholaguri Tea Estate under Golaghat PS, committed aggravated penetrative sexual assault on the victim, aged about 16 years in her house and thereby committed an offence punishable u/s 6 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 3(three) witnesses in the case and one court witness was examined and they are as follows:-

(i) Sri Mithun Warly (informant/father of victim)	-PW1
(ii) Sri Firon Mahili	- PW2
(iii) Sri Laltu Garh	- PW3
(i) 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(informant/father of victim) stated in his examination-inchief that about 2 years back, one day, he came to know that his daughter(victim) had became 5 months pregnant and as the accused person, Moni Garh used to frequently visit his house in his absence and in the absence of any other family members of his house, he suspected him to have made Nikita Warly pregnant and so, he had lodged an ejahar against him in Numaligarh Police Out Post and that later, he came to know that one boy named Sidhu of a distant village whose parents' names he did not know had actually made his daughter(victim) pregnant. PW1 also stated that at the time of occurrence, the age of his daughter(victim) was above 18 years. During cross-examination, PW1 stated that accused Moni Garh did not make his daughter(victim) pregnant and that his daughter(victim) did not tell him that accused Moni Garh had made her pregnant and that he had lodged the ejahar against the accused person only on suspicion.
- 9. PW2 and PW3 stated in their examination-in-chief that they did not know anything about the occurrence.
- 10. CW1(victim) in her examination-in-chief stated that about 2 years back, one day, when she was 5 months pregnant, her father, Mithun Warly came to know about it and suspecting accused Moni Garh to have made her pregnant, lodged an ejahar against him in Numaligarh Police Out Post and that actually one boy named Abhijit @ Sidhu had made her pregnant. CW1 also stated that at the time of occurrence, her age was

18/19 years. During cross-examination, CW1 stated that accused Moni Garh did not make her pregnant and that her father, Mithun Warly had lodged this case against the accused person only on suspicion.

11. From the evidence on record it transpires that the witnesses of the case including the informant and victim did not implicate the accused person with the alleged offence as stated in the ejahar. PW1(informant) testified in his evidence about suspecting the accused to have made his daughter(victim) pregnant as the accused person used to frequently visit his house in his absence and in the absence of any other family members of his house and so, lodging an ejahar against him in Numaligarh Police Out Post and about coming to know later that one boy named Sidhu of a distant village had actually made his daughter(victim) pregnant. PW1 also stated that at the time of occurrence, the age of his daughter(victim) was above 18 years. During cross-examination, PW1 stated that accused Moni Garh did not make his daughter(victim) pregnant and that he had lodged the ejahar against the accused person only on suspicion. CW1(victim) herself stated that in her evidence that when she was 5 months pregnant, her father Mithun Warly came to know about it and suspecting accused Moni Garh to have made her pregnant, lodged an ejahar against him and that actually one boy named Abhijit @ Sidhu had made her pregnant and that she also stated that at the time of occurrence, her age was 18/19 years. During cross-examination, CW1 stated that accused Moni Garh did not make her pregnant and that her father Mithun Warly had lodged this case against the accused person only on suspicion. On the other hand, the other independent witnesses of the case, namely, PW2 & PW3 expressed their ignorance about the alleged occurrence in their evidence. Thus, it is seen that the most vital witness, i.e. PW1(father of the victim) and CW1 (victim) of this case did not support the prosecution case and could not prove the contents of the ejahar. Moreover, as both PW2 and CW1(victim) testified that the age of the victim was above 18 years at the time of occurrence, no offence under the POCSO Act is made out.

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 Moni Garh is acquitted and set at liberty. His bail bond shall remain in force for a period of six months from today.

Given under my hand and seal of this Court on this 27th day of *January, 2019* at Golaghat.

Dictated & corrected by me,

(K. Hazarika)

Special Judge

Golaghat.

(K. Hazarika)

Special Judge,

Golaghat.

# APPENDIX

<u>Prosecution witness:</u>	
PW1 Sri Mithun Warly (informant/father of victim)	
PW2 Sri Firon Mahili	
PW3 Sri Laltu Garh	
CW1 Victim	
<u>Defence witness:</u>	
Nil	
Documents Exhibited by Prosecution:	
Nil	
Material Exhibited by Prosecution:	
Nil	
<u>Defence Exhibit</u> :	
Nil.	
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Special Judge	Э,
Golaghat.	