IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Special (POCSO) Case No.21/2017 U/S 363/376 (2)(i) IPC, read with Section 4 of POCSO Act.

Present: Mr. Dhrupad Kashyap Das, Sessions Judge,

Morigaon.

State of Assam

Vs

Sri Sachin Deka Accused.

Date of Charge :- 17.04.2018.
Date of recording evidence :- 26.06.2018.

Date of Argument :- 27.06.2018.

Date of Judgment :- 27.06.2018.

Appearance for the Parties

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the accused :- Mr. U. C. Roy, Ld. Advocate.

JUDGMENT

Prosecution case as reflected in the ejahar in brief is that on the eventful day i.e. on 01.04.2017 the daughter of the informant by the name Miss – X (real name is withheld to screen the victim from infamy) went to her school, but she did not return in time and, then, at about 2.00 P.M., the son-in-law of the informant received one phone call from the Mobile No.9739221124 that he took the daughter of the informant. However, the informant did not know wherefrom the said phone call came and who called this phone call. So, the informant went to Morigaon P.S. and lodged an ejahar after three days of the occurrence of incident to that effect.

On receipt of the said ejahar, O/C Morigaon P.S. registered a case vide Morigaon P.S. Case No.118/17, U/s 363 IPC, read with Section 4 / 5 of POCSO Act against the above-named accused person.

Investigation was set in motion. During the course of investigation the I.O., visited the place of occurrence and examined the witnesses. The I.O. drew up sketch map of the place of occurrence. Thereafter, the I.O. searched for the victim and the accused. Accordingly, the I.O. recovered the victim girl and sent the victim girl for medical examination. Thereafter, the I.O. brought the victim girl to the Court for recording her statement U/s 164 of Cr.P.C. The I.O. arrested the accused person and produced before the learned Court, wherefrom he was remanded to judicial custody. Subsequently, he was let off on Court bail. Thereafter, upon completion of investigation and finding sufficient incriminating materials, the I.O. submitted charge-sheet with allegation of offences punishable U/s 363 IPC, read with Section 4/6 of POCSO Act against the accused Sri Sachin Deka. Thereafter, the accused attended the Ld. Court and the learned Court furnished copies of relevant documents as mandate U/s 207 Cr.P.C. to him. Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record framed charge U/s 363/376 (2) (i) IPC, read with Section 4 of POCSO Act against the accused, which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

2. Point for determination:

- (i) Whether the present accused on the eventful day i.e. on 01.04.2017 at around 2.00 P.M. at village Gerakhuwa under Morigaon P.S. in the district of Morigaon kidnapped the minor daughter of the informant without the consent of the informant and kept the said minor girl away from the lawful guardianship of the informant?
- (ii) Whether the present accused on the same day, time and place committed rape upon the minor daughter of the informant, who is under 16 (sixteen) years of age ?

- (iii) Whether the present accused on the same day, time and place committed an offence of penetrative sexual assault as defined U/s 3 of POCSO Act with the minor daughter of the informant?
- 3. In this case prosecution has examined only 2 (two) PWs, the most vital witness of this case i.e. the victim as PW-2 and the informant Sh. Putul Medhi as PW-1. But their evidence did not support the prosecution case from any angle. Therefore, the Ld. P.P. has prayed for closing down of further prosecution evidence and, accordingly prosecution evidence was closed. In the event of examination of the accused as warranted U/s 313 Cr.P.C. found to be redundant; the same was dispensed with for ends of justice. The accused declined to adduce defence evidence.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

- 5. In this case the prosecution has alleged that on the eventful day, the above-named accused kidnapped the minor daughter of the informant and committed rape upon her without her consent and also committed penetrative sexual assault upon the minor daughter of the informant.
- 6. PW-2, the victim Miss X has stated in her evidence that the informant is her father and the accused is known to her. According to PW-2, the alleged incident of occurrence took place about one year ago. PW-2 stated that on the date of occurrence of the incident, she met the accused on the road and eloped with him voluntarily. PW-2 stated that though the accused initially refused to take her, but she forced him to take her to his house. PW-2 stated that after three days of the incident of occurrence, she came back to her house and, then, she came to know that her father had already lodged an ejahar with regard to her missing from house. PW-2 stated that on being asked by her parents, she told that she had love affairs with the accused and on the date of occurrence of the incident, she voluntarily eloped with the accused. PW-2 proved Ext.2 is her statement before Magistrate, whereupon Ext.2 (1) is her signature.

During cross-examination, PW-2 stated that the accused did not take her forcefully. PW-2 stated that she went with the accused out of love affairs without informing her parents. PW-2 stated that the accused is innocent and her father lodged the case against the accused out of misunderstanding.

PW-1, the informant Sh. Putul Medhi stated that he lodged the ejahar about one year ago. PW-1 stated that the victim girl is his daughter and he knew the accused person. PW-1 stated that on the date of occurrence of the incident, his daughter went missing from the school and she did not come back to her house till night. PW-1 stated that despite search he did not find his daughter for about three days, so, he lodged the ejahar after 3 / 4 days of the incident of occurrence. PW-1 stated that after few days of the incident of occurrence, the parents of the accused brought his daughter to his house and on being asked his daughter told him that she had love affairs with the accused. PW-1 proved Ext.1 the ejahar, whereupon, Ext.1 (1) is his signature.

During cross-examination, PW-1 stated that at the time of occurrence of the incident his daughter was a matured girl and she eloped with the accused on her own free will. PW-1 stated that the accused is innocent and he did not kidnap his daughter, however, he lodged the ejahar against the accused out of misunderstanding.

Thus, from the evidence of PW-1 & PW-2 it is found that none of these two vital witnesses including the victim did not utter a single word as regards kidnapping, rape and penetrative sexual assault being allegedly committed by the accused. It is also clarified from the evidence of the victim that she had love affairs with the accused and she voluntarily went with the accused on the eventful day.

7. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim herself stated that she had love affairs with the accused and she voluntarily went with the accused on the eventful day. So, we have found that the most material witness of this case as PW-2 (the victim) did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. mandates an acquittal of

the accused from an offence, which states that "If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."

8. In view of the above discussion and in view of Section 232 Cr.P.C., I have found that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 363/376 (2) (i) of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty. In this case, since the victim girl has completely negated the prosecution case, therefore, she is not entitled to receive any compensation under section 357 A Cr.P.C.

Judgment is delivered and pronounced in the open Court on this 27th day of June, 2018 under my hand and seal.

Dictated & corrected by me

Sessions Judge, Morigaon.

APPENDIX

A. Prosecution witness:-

- 1. PW-1: Sh. Putul Medhi,
- 2. PW-2: Miss Parishmita Medhi.
- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit :-
- 1. Ext. 1, the ejahar,
- 2. Ext. 2, the statement of the victim recorded U/s 164 Cr. P.C.
- D. Defence exhibits :- Nil.