IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

POCSO Case No. 03/2018 U/s 4 of the POCSO Act

Present : Mr. P. Das

Special Judge, Morigaon, Assam.

State of Assam

-VS-

Md. Mofidul Islam Accused

Date of Charge : 09.10.2018.

Date of Argument : 14.11.2019.

Date of Judgment : 25.11.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. N. U. Ahmed, Ld. Advocate.

Ms. S. Shah, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that on 13.12.2017, the prosecutrix cum informant lodged a case at the Moirabari Police Station alleging inter-alia that on 11.12.2017, at about 11 PM, the accused person entered into her house when her mother had gone out to answer nature's call and tried to commit sexual assault upon her. On the basis of the ejahar, Moirabari PS Case No. 464/2017, was registered u/s 376(2)(i) IPC r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012.
- **2.** After completion of investigation, charge sheet was submitted against the accused person namely, Md. Mofidul Islam u/s 376(2)(i) IPC r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012, showing him as absconder. Subsequently, vide order dated 09.10.2018, charge was framed against the accused u/s 4 of the Protection of Children from Sexual Offences Act, 2012. The charge upon being denied by the accused led to commencement of the trial. At the trial, prosecution side

examined three witnesses including the prosecutrix cum informant and the Medical Officer. They were cross-examined by the defence.

3. Considering the nature of the evidence adduced by these three witnesses, the prosecution evidence was closed, and thereafter, the accused was examined u/s 313 Cr.PC. Defence did not adduce any evidence.

4. **POINTS FOR DETERMINATION**

Whether the accused Md. Mofidul Islam is guilty of committing an offence punishable u/s 4 of the POCSO Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- **5.** Heard learned public prosecutor for the State and learned defence counsel for the accused person. Perused all the relevant materials from the record.
- 6. PW-1 is the prosecutrix and she has stated in her deposition that she was the informant of the case and she knew the accused person. She further stated that at the time of the incident she was aged 18 ½ years, that she was having a love affair with the accused, which was not accepted by her parents and that one day she eloped with the accused and that subsequently her parents brought her back to her parental house. Thereupon, she lodged the instant case, but subsequently she got married to the accused. During her deposition, she proved as Exhibit 1, the ejahar lodged by her and as Exhibit 1 (1) her signature thereon. She also proved as Exhibit 2, her statement before the learned Magistrate during investigation and as Exhibit 2 (1), (2) her signatures thereon. In her cross-examination by the learned defence, PW-1 stated that her father had not accepted their relationship and that upon his instruction she had lodged the instant case and that she had also given her statement before the learned Magistrate upon the instruction of her father.
- **7.** PW-2 is Samsul Hoque. He stated in his deposition that he knew the prosecutrix and also the accused and that the incident had taken place about one and half years prior to his giving deposition. He further stated that the prosecutrix and the accused were having a love affair but it was not accepted by her family and that subsequently pursuant to the said love affair, the prosecutrix had eloped with the accused. He further stated that thereafter, the prosecutrix and the accused got married. This witness

further stated in his evidence that at the time of the incident the prosecutrix was aged about $18 \frac{1}{2}$ years. In cross-examination by the learned defence, PW-2 stated that the instant case was lodged as the father of the prosecutrix was not accepting the relationship of the prosecutrix with the accused.

- **8.** PW-3 is Dr (Ms) N Ahmed and she stated in her deposition that on 13.12.2017, while she was working as Senior M & HO at the Morigaon Civil Hospital, she examined the prosecutrix in connection with this case. She further stated in her deposition that upon examination she did not find any external injury on the prosecutrix and that her vaginal smear examination did not show the presence of any spermatozoa. She further stated that though x-ray examination was suggested, it was not done. The medical officer further stated in her deposition that on the basis of her examination, she opined that there was no evidence of recent sexual intercourse at that the time of the examination; that there were no sign of injuries on her private parts at the time of the examination; that clinically the age of the prosecutrix was 17 18 years. As part of her deposition, PW-3 he proved the medical report as Exhibit 3 and her signature thereon as Exhibit 3 (1). In cross-examination by the learned defence, the medical officer stated that the clinical age indicated can have a variation of two years on either side.
- 9. Upon perusing and analysing the aforesaid evidence of the prosecution side on record, I find that the prosecutrix herself stated in her evidence that she was a major at the time the incident aged $18 \frac{1}{2}$ years. The other witness PW-2 has also stated the same in his evidence. In this regard, the Doctor who had examined the prosecutrix after the incident during the investigation has stated her clinical age at the time of examination to be 17 18 years, with the rider that such clinical determination, can have a variation of two years on the side. Thus, not only the prosecutrix has indicated that she was a major at the time of the incident, the evidence of the other witness and the medical officer also indicates the possibility of her being a major as well, at the time of the incident.
- **10.** The medical officer in her evidence has stated that after examination of the prosecutrix, she did not find any evidence of recent sexual intercourse nor any sign of injuries on her private parts. In this context, the evidence of PW-2 also does not include any element of sexual assault or sexual offence by the accused upon the prosecutrix.

11. More importantly, the prosecutrix herself stated in her evidence that she had eloped with the accused person pursuant to her love affair with him and subsequently got married to the accused. Apart from indicating her age to be above 18 years at the time of the incident, the prosecutrix in her evidence has also not made any imputation regarding commission of any sexual assault or sexual offence upon her by the accused. The prosecutrix has also indicated about her making statement before the magistrate

as instructed by her father. This also assumes significance in the context of her

evidence that her relationship with the accused was not accepted by her parents at the

time.

12. On the basis of the prosecution evidence on record, I come to the considered

view and finding that the said evidence is grossly inadequate to come to any conclusion

of guilt of the accused person with regard to the penal offence with which he has been

charged with and/or any other minor offence.

13. Consequently, I come to the inevitable conclusion that the prosecution case fails

due to lack of adequate evidence and the accused person is entitled to be acquitted.

ORDER

14. On the basis of the other evidence and relevant materials on record of the case,

the accused Md. Mofidul Islam stands acquitted. The accused, if in detention, shall be

set at liberty forthwith, if, not wanted in any other case.

15. His bail bonds and sureties stands extended for six months in terms of the

provisions of Section 437-A Cr.PC.

16. A copy of this judgement and order shall be sent to the learned District

Magistrate Morigaon in compliance with Section 365 of the Cr.PC.

17. Given under my hand and seal on this the 25th day of November, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

APPENDIX

Prosecution Witnesses:

PW-1 : Prosecutrix.

PW-2 : Samsul Hoque.

PW-3 : Dr. N. Ahmed, Medical Officer.

Defence Witness:

Nil.

Prosecution Exhibits:

1. Ext. 1 : Ejahar.

2. Ext. 2 : 164 Cr.PC statement of the prosecutrix.

3. Ext. 3 : Medical Report.

Defence Exhibits:

Nil.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

POCSO Case No. 22/2018

25.11.2019:

Accused Md. Mofidul Islam is present along with learned defence counsel.

The judgment, in separate sheet is ready and pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Md. Mofidul Islam stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.

His bail bonds and sureties stands extended for six months in compliance with Section 437-A Cr.P.C.

A copy of this judgement and order shall be sent to the learned District Magistrate Morigaon in compliance with section 365 Cr.P.C.

The instant case is disposed of on the aforesaid terms.

Special Judge Morigaon, Assam