IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.11/2017 U/S 366 (A)/376(i) IPC, R/W Section 4 of POCSO Act

Present : Mr. D. K. Das Sessions Judge, Morigaon.

State of Assam

Vs.

Sh. Mridul Pator

..... Accused Person

Date of Charge :- 01.08.2017.
Date of recording evidence :- 05.08.2017.

Date of Argument :- 05.08.2017.

Date of Judgment :- 09.08.2017.

Appearance for the Parties

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

Advocate for the accused:- Mr. Pushpendra Kr. Medhi, Ld. Advocate,.

JUDGMENT

1. The prosecution case in brief is that on 25.04.2014, at around 6.00 PM, the accused namely, Mridul Pator, S/o Akaswar Pator of village Borpujia under Morigaon district, had kidnapped the minor daughter of the informant by way of inducement and confined the victim girl in an unknown place.

On 01.05.2014, the informant went to the Mikirbheta PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Mikirbheta PS registered a case vide Mikirbheta PS Case No.143/2014, U/s 366 (A) of IPC.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. recovered the victim girl and examined the victim as well as other material witnesses and also got the victim medically examined. Thereafter, the I.O. brought the victim to the learned Court for

recording her statement U/s 164 Cr.P.C before the Magistrate. The I.O. during investigation of the case failed to arrest the accused person. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused with allegation of offence punishable U/s 366 (A)/376(i) IPC r/w Section 6 of the POCSO Act showing the accused person as absconder. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. Thereafter, the accused person surrendered before the learned Court. Accordingly, the accused person appeared before this Court and he was let off on court bail and he was also furnished with copies of relevant documents as mandated U/s 207 Cr.P.C.

On receipt of the case record, having heard Ld. Counsel of both sides and basing upon the materials on record, framed charge U/s 366 (A)/376 (i) IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused person to which he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused person on the eventful day i.e. on 25.04.2014 at about 6.00 PM at village Tangonmara under Mikirbheta PS, induced the minor daughter of the informant to go from her house with the accused with an intent that the said minor girl may be or shall be forced or seduced to illicit intercourse with the accused?
- (ii) Whether the accused person on the same day, time and place after kidnapping the minor daughter of the informant committed rape with the victim girl?
- (iii) Whether the accused person on the same day, time and place committed an offence penetrative sexual assault with the minor daughter of the informant?
- 3. In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the mother of the victim as CW-1 and the victim girl as PW-1. But their evidence did not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the

remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for the 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

In this case, it is alleged by the prosecution that on the eventful day the above-named accused person kidnapped the minor daughter of the informant and confined her in an unknown place.

To prove this fact, the prosecution has examined PW-1, the victim, she in her evidence has stated that the informant was her father who expired 1 year ago. Victim's father lodged this case about 2/3 years ago and at that time she was a matured girl. However, her father did not agree to her relationship with the accused, for which, she eloped with the accused person willingly and got married with the accused person. Later on, her father accepted their relationship and allowed her to live conjugal life with the accused. Victim also stated that her father, after lodging the case has realized that the case was lodged out of misunderstanding and her father accepted the accused as his son-in-law. Presently, the accused person is her husband and they are leading a happy conjugal life and she has no objection, if, the accused person (husband) is acquitted.

CW-1, Monica Deka Raja, who is the mother of the victim girl examined as court witness, she in her evidence has stated that, the informant was her husband who died 1 year ago. The victim girl is her daughter. She also knows the accused person, who is her son-in-law. Her husband lodged this case about 2/3 years ago and at that time her daughter was a matured girl. She also stated that her daughter (victim) had love affair with the accused Mridul Pator and out of love affair, her daughter eloped with the accused person and later on, they got married. However, her husband did not agree with their relationship and

therefore, her husband lodged the case against the accused person. After lodging the case, her husband realized that the case was lodged out of misunderstanding and her husband accepted the accused person as his son-in-law. At present, her daughter is leading a happy conjugal life with the accused person and she has no objection, if, the accused person (son-in-law) is acquitted.

Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and CW-1 (i.e. the victim and the mother of the victim) examined by the prosecution have not stated anything as regards to kidnapping, rape and penetrative sexual assault being allegedly committed by the accused.

- 5. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim and her mother herself stated that the accused did nothing wrong to her and the case was lodged out of misunderstanding against the accused person and, therefore, the accused person may be released. So, we have found that the most material witness of this case as PW-1 & CW-1 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."
- 6. 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 person is not found guilty for the offences punishable U/s 366 (A)/376(i) of IPC, r/w Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this 09th day of August, 2017 under my hand and seal.

<u>APPENDIX</u>

A. Prosecution witness

- 1. PW-1 :- Miss X
- 2. CW-1 :- Monica Deka Raja
- B. <u>Defence witness: Nil.</u>
- C. Prosecution Exhibit:
- D. Defence exhibits :- Nil.

Special Judge, Morigaon.

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09.08.2017.

Accused person Mridul Pator is present.

Judgment is ready and pronounced in the open Court.

Considering the evidence on record, it is 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 offence punishable U/s 366 (A)/376 (i) of IPC r/w Section 4 of the POCSO Act and as such, he is acquitted and set at liberty.

Judgment is enclosed in separate sheet.

Special Judge, Morigaon.