IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

POCSO Case No. 03/2020 U/S 366/376 IPC r/w Section 6 of the POCSO Act.

State of Assam

-VS-

Md. Mukshidul Islam S/o Md. Alal uddin

R/o Village- Borkhabal Baluchar

P.S. – Laharighat

District – Morigaon, Assam. Accused

Date of Charge : 30.01.2020.

Date of Evidence : 06.03.2020.

Date of Argument : 06.03.2020.

Date of Judgment : 06.03.2020.

Appearance for the Parties

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

Advocate for the Accused: Mr. A. U. Siddique, Ld. Advocate.

JUDGMENT

Prosecution case in brief is that on 25.10.2019, the informant cum Victim 'X' (Name withheld) lodged an FIR before the Laharighat Police Station alleging inter-alia that on 23.10.2019, at about 12 O'clock midnight, the accused Mukshidul Islam by way of inducement, kidnapped her and took her to his house and committed sexual assault upon her repeatedly. It is also alleged that on the next morning, upon seeing her in that house, the parents and other

family members of accused Mukshidul Islam rebuked her and attempted to assault her and also chased her out from their house.

- 2. On receipt of the FIR, Laharighat PS Case No. 379/2019 u/s 448/376/294 IPC r/w Section 4 of the POCSO Act was registered and investigated into. During investigation statement of the victim was recorded u/s 164 Cr.P.C. The victim was also forwarded for medical examination but she refused to undergo medical examination. On completion of investigation, the Investigating Officer (I/O) submitted charge sheet against the accused Mukshidul Islam only for trial u/s 376 IPC r/w Section 4 of the POCSO Act, 2012. The other accused persons as named in the FIR were not sent up for trial due to lack of evidence against them.
- On 20.01.2020, charge sheet was laid before this Court and vide order dated 30.01.2020, charges u/s 366/376 IPC r/w Section 6 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty. It may be mentioned herein that since 15.12.2019, the accused is in judicial custody and face the trial as UTP.
- **4.** During trial, prosecution side has examined two witnesses i.e. the mother of the victim and the informant cum victim only. Considering the nature of the evidence, examination of accused u/s 313 Cr.P.C is dispenses with. I propose to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. A. U. Siddique, learned defence Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE:

- **6.** (*I*) Whether on 23.10.2019, the accused has kidnapped/abducted the victim to his house? If yes, what was the intention of the accused?
 - (II) Whether on 23.10.2019, the victim 'X' was subjected to aggravated penetrative sexual assault/rape by the accused in his house?

DISCUSSION, DECISION AND REASONS THEREOF

- PW-1, Musstt. A. Khatun, the mother of the victim in her evidence deposed that at the time of incident, victim was aged about 18 years and presently she is appearing in Class X final exams. She stated that on 23.10.2019, at midnight hours, the accused took away the victim 'X' from her house. On finding that victim 'X' was missing from the house and during search, suspecting that having love affairs with the accused Mukshidul Islam, she and others went to the house of accused and found the victim 'X' in his house. The victim was brought back. On bringing back her daughter, she told her that having love affairs with the accused Mukshidul Islam, she eloped with him to perform marriage. However, at the insistence of villagers, the victim 'X' has to file this case. Police did not interrogate her. In her cross-examination by defence, she admitted that on the date of the incident, her daughter was above 18 years. She has no objection in acquittal of the accused from this case.
- 8. PW-2, the informant cum victim 'X' in her evidence deposed that accused Mukshidul was known to her having love affairs with him for last 21/2 months. Her date of birth is 08.04.2003, and presently, she is reading in Class-X. She stated that on 23.10.2019 at midnight hours as pre-planned, the accused came to her house and she went with him to his residence. On the next morning, his parents did not agree to their relation and informed her mother about her presence there. On knowing this, her elder brother Saiful Islam went to the house of the accused and brought her back to their house. On that night, she slept in a different room from the accused. Waiting for amicable settlement for performing marriage, as parents of the accused did not agree to her marriage with the accused, at the insistence of the villagers, she had to file this case. She exhibited the FIR as Ext. 1 and Ext. 1(1) is her signature thereon. Police took her for medical examination but she refused to undergo medical examination. Police also brought her to the Court for recording her statement. Ext. 2 is her statement given u/s 164 Cr.PC wherein Ext. 2(1) and 2(ii) are her signatures. In her cross-examination by defence, she stated

that she went with the accused on her own with a desire to marry with him. She gave her statement in the Court vide Ext. 2, on being tutored by her family members. She did not bring the age proof document with her. Presently, they have compromised the matter with the accused. The accused did not misbehave her and she has no objection in acquittal of the accused from this case.

- **9.** Basing on the above evidence, let me decide the points formulated. So far age of the victim is concerned, it has been revealed from the evidence of the victim claimed that, her date of birth is 08.04.2003. However mother of the victim in her cross-examination admitted that at the time of incident, the victim was aged above 18 years. Prosecution did not bring any document on age to contradict this. As such, it is presumed that at the time of incident, the age of the victim above 18 years.
- 2, the informant cum victim 'X', it appears that she deposed nothing against the accused involving him with the alleged offence of abduction and committing rape upon her by the accused. The victim in her evidence-in-chief clearly stated that accused Mukshidul was known to her having love affairs with him for last 2½ months. She stated that on 23.10.2019 at midnight hours as pre-planned, the accused came to her house and she went with him to his residence. On the next morning, his parents did not agree to their relation and informed her mother about her presence there. On that night, she slept in a different room from the accused. She further stated that at the insistence of the villagers, she had to file this case. The accused did not misbehave her. The above facts were corroborated by the mother of the victim. In the instant case, ingredient of offence u/s 366 or 376 IPC is totally missing. The victim being major in age, provisions of Pocso is not attracted.
- **11.** From the above evidence as discussed, it is clear that there is no material whatsoever regarding kidnapping/abduction or commission of rape by the accused upon the victim 'X'.

- **12.** Prosecution has failed to prove the ingredients of charge U/S 366/376 IPC and Section 6 of the POCSO Act against the accused Mukshidul Islam. As such, accused Mukshidul Islam is acquitted from the charges U/S 366/376 IPC and Section 6 of POCSO Act, 2012 and set at liberty forthwith.
- In view of the provisions of section 437A Cr.P.C and following the law laid down by Hon'ble Gauhati High Court in **Abdul Malek @ Malek Ali vs- State of Assam 2018 (5) GLT 272,** accused Mukshidul Islam be released forthwith from Jail custody on execution of PR Bond of Rs. 2,000/- (Rupees two thousand) with a condition that he shall appear before appellate court, if so required. This Bond shall remain in force for six months from the date of execution.
- **14.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **15.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **16.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 6th day of March, 2020 at Morigaon.

Special Judge, Morigaon, Assam