IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (POCSO) Case No. 48/2017

Present : Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Sri Babu Moni Mahanta Accused

Date of Charge : 28.08.2018.

Date of recording evidence : 14.02.2019.

Date of Argument : 12.03.2019.

Date of Judgment : 26.03.2019.

Appearance for the Parties

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

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

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 19.07.2017 at morning hours, the minor daughter of the informant went to attend her tuition classes and when she did not return home, the informant on being enquired came to know that the accused, namely – Babu Moni Mahanta, S/o Biren Mahanta of village Bharal Tup under Morigaon P.S. in the district of Morigaon had kidnapped her and confined her in his house. It is further stated that when the informant went to bring her minor daughter from the house of the accused person, the accused person refused to hand over her minor daughter. On 20.07.2017, the informant lodged a case before Morigaon P.S and accordingly, the O.C. of Morigaon P.S. registered the case vide Morigaon PS case No. 247/2017 U/S 366(A) IPC.

2. After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 28.08.2018, charges were framed against the accused u/s 366 (A) IPC r/w Section 4 & 8 of the Protection of Children from Sexual Offences Act, 2012. The charges upon being denied by the accused led to commencement of the trial.

3. POINTS FOR DETERMINATION

Whether the accused Babu Moni Mahanta is guilty of committing an offence punishable u/s 366 (A) IPC r/w Section 4 & 8 of the Protection of Children from Sexual Offences Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- **4.** Heard learned public prosecutor for the State and learned defence counsel for the accused person. Perused the relevant materials on record.
- **5.** Section 366 (A) IPC punishes the act of inducing a minor girl with intent that she may be or shall be forced or seduced to illicit intercourse. Section 4 of the Protection of Children from Sexual Offences Act, 2012, punishes the offence of penetrative sexual assault committed upon a child i.e. person below 18 years and Section 8 of the Protection of Children from Sexual Offences Act, 2012, punishes the offence of sexual assault committed upon a child i.e. person below 18 years.
- 6. In her evidence as PW-2, the prosecutrix has indicated her age to be 16 years, but has stated that pursuant to her love affair with the accused, on the date of incident she has called the accused to go to her elder sister's house. That, subsequently mother reached the house of the accused and raised hue and cry and then she and the accused came there and that her mother lodged the case. She also stated that during the time she was with the accused, there was no physical relationship between them. In her cross-examination, the prosecutrix stated that the accused had not forcefully taken her away; that she had voluntarily gone with the accused and that the accused did not commit any bad act with her. Therefore, I find

that the evidence of prosecutrix does not implicate the accused regarding any kidnapping and/or commission of sexual assault.

- The prosecutrix mother has adduced evidence as PW-1, in which she stated that at the time of incident her daughter was 15/16 years and a student of class-X. She further stated in her evidence that on the date of incident, the prosecutrix had gone to roam around and later, she came to know that some people had seen her daughter going somewhere with the accused and then she lodged the case against the accused. PW-1 has exhibited the ejahar as Ext.1 and Ext.1 (1) is her signature thereon. PW-1 further stated that upon the recovery of her daughter, she told that she had only gone with the accused due to friendship. In cross-examination, she stated that she lodged the case out of suspicion and that her daughter told her that there was no physical relationship with the accused and that the accused did not force her to go with him. PW-1 further stated in her cross-examination that, the accused was familiar with her daughter and therefore, her daughter gone with the accused.
- **8.** On the basis of the aforesaid evidence-on-record, I am of the considered view that the ingredients of 366 (A) IPC and/or any other offence of kidnapping is not proved. Further, the evidence on record also does not make out any ingredients of sexual assault, penetrative or non-penetrative.
- **9.** Consequently, the prosecution case fails due to lack of adequate evidence and the accused is entitled to be acquitted.

<u>ORDER</u>

- **10.** On the basis of the evidence and relevant materials on record of the case, the accused Babu Moni Mahanta stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **11.** His bail bonds and sureties stand discharged.
- **12.** A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.

13. Given under my hand and seal on this the 26th day of March, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

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APPENDIX

A. Prosecution witness

- 1. PW-1: Smti. Gitanjali Bordoloi,
- 2. PW-2:- Prosecutrix.
- B. Defence witness: Nil.
- **B. Prosecution Exhibit:**
- 1. Ext.1 :- The ejahar.
- 2. Ext.2: The statement of informant recorded U/s 164 Cr. P.C.
- 3. Ext.3: The statement of prosecutrix recorded U/s 164 Cr. P.C.
- C. Defence witness: Nil.
- D. Defence exhibits :- Nil.

(P Das)

Special Judge, Morigaon

Special (POCSO) Case No. 48/2017

26.03.2019:

Accused Babu Moni Mahanta 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 Babu Moni Mahanta stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.

His bail bonds and sureties stand discharged.

A copy of this judgment 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