# IN THE COURT OF THE SPECIAL JUDGE, MORIGAON POCSO Case No. 47/2018

Present : Mr. P. Das

Sessions Judge, Morigaon.

State of Assam

-VS-

## Md. Ashad Ali @ Arshad Ali @ Kabiraj ..... Accused

Date of Charge : 12.11.2018.

Date of Argument : 11.10.2019.

Date of Judgment : 06.11.2019.

# **Appearance for the Parties**

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

Advocate for the Accused :- Mr. A. Salam, Ld. Advocate.

#### **JUDGMENT**

- 1. The prosecution case in brief is that on 13.07.2018 one Musstt. Aklima Begum lodged an ejahar at the Laharighat PS alleging inter alia that the present accused Md. Ashad Ali @ Arshad Ali @ Kabiraj with the help of others by way of inducement kidnapped her minor daughter on 03.07.2018 from the PWD road near Brahmaputra Valley School. On the basis of the said ejahar, Laharighat P.S. Case No. 185/18 was registered under section 363 IPC and subsequently, 376 IPC was added, which after investigation resulted in a charge-sheet against the present accused U/s 376 IPC r/w Section 4 of the POCSO Act. Subsequently, upon perusing the case record and hearing the learned counsels, charge was framed vide order dated 12.11.2018 against the said accused U/s 4 of the POCSO Act, which upon being read over and explained to the accused, was denied, leading to the commencement of the trial.
- **2.** At the trial, the prosecutrix and her mother, who was also the informant of the case adduced evidence as PW-1 and PW-2. PW-1 was cross-examined, but PW-2 was not cross-examined. Due to the nature of evidence, the prosecution evidence was

closed at that stage. Thereafter, the accused was examined U/s 313 Cr.PC. The defence side did not adduce any evidence.

## 3. **POINTS FOR DETERMINATION**

Whether the accused person is guilty of committing an offence punishable u/s 4 of the POCSO Act?

## **DISCUSSION, DECISION AND REASONS THEREOF**

- 4. Heard learned Public Prosecutor for the State and the learned defence counsel Mr. A. Salam, appearing for the accused person. I have perused the evidence and other relevant materials on record and also considered the submissions of learned counsels.
- **5. PW-1** is the prosecutrix and she has stated in her deposition that the informant is her mother and that the accused was a neighbouring person. She further stated that at the time of the incident, her age was 18 ½ years and that she was having a love affair with the accused, pursuant to which she eloped with him, but her parents did not agree with her relationship and her mother lodged the instant case against the accused, where after the police brought her back home. She further stated that subsequently she got married to another person. The prosecutrix stated in her deposition that after lodging of the case, the police had taken her to the Doctor for medical examination and also before the Magistrate for recording her statement. She proved that statement as Exhibit 1 and her signature thereon as Exhibit 1 (1). In cross-examination, the prosecutrix stated that she eloped with the accused voluntarily out of her own will and that the accused did not commit any offence upon her.
- **6. PW-2** Aklima Begum stated in her deposition that she is the informant of the case and that the prosecutrix is her daughter and that she also knew the accused person, who was a neighbourhood person. She further stated in her deposition that at the time of the incident the age of the prosecutrix was 18 ½ years and that she was having a love affair with the accused since her school days and pursuant to such love affair, she eloped with him. She further stated that on the day of the incident the

prosecutrix went missing and upon coming to know that she had eloped with the accused, this witness lodged the instant case upon the accused. She proved as Exhibit 2, the ejahar lodged by her, when she put her thumb impression. She further stated that subsequently the police recovered the prosecutrix and handed her over to them and that subsequently, the marriage of the prosecutrix was finalized with another person. This witness was not cross-examined by the learned defence.

- **7.** Both the prosecutrix-PW-1 and the informant- PW-2 have stated in their testimonies as narrated above that at the time of incident, the prosecutrix was aged 18 ½ years. As already mentioned, PW-2 is also the mother of the prosecutrix. Apart from the above, PW-2 has stated that the prosecutrix eloped with the accused pursuant to her love affair. The prosecutrix herself has also stated about having love affair and having eloped with the accused pursuant to love affair and since her parents did not agree with their relationship, therefore, the case was lodged. In the cross-examination of PW-1, it is categorically stated about voluntary elopement with the accused and she also stated that the accused did not commit any offence upon her.
- **8.** On the basis of the aforesaid evidence, the ingredients of Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, with which the accused has been charged with in this trial and/or any other minor offence, are not made out.
- **9.** Consequently, the prosecution case fails due to lack of evidence and the accused is entitled to be acquitted.

#### ORDER

- **10.** On the basis of the evidence and relevant materials on record of the case, the accused Md. Ashad Ali @ Arshad Ali @ Kabiraj 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 06<sup>th</sup> day of November, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon,

(P. Das) Special Judge Morigaon, Assam

## **APPENDIX**

# **A. Prosecution witness**

- 1. PW-1:- The Prosecutrix
- 2. PW-2 :- Musstt. Aklima Begum
- B. <u>Defence witness: Nil.</u>

# **C. Prosecution Exhibit:**

- 1. Ext.1: The statement of the prosecutrix U/s 164 Cr.PC.
- 2. Ext.2 :- The ejahar.
- D. Defence exhibits :- Nil.

(P Das)

Special Judge, Morigaon

### **POCSO Case No. 47/2018**

# 06.11.2019:

Accused Md. Ashad Ali @ Arshad Ali @ Kabiraj is present along with learned defence counsel, Sh. A. Salam.

The judgment is pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Md. Ashad Ali @ Arshad Ali @ Kabiraj 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