## IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

## **POCSO Case No. 01/2018**

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

1) Md. Jainal Abedin

2) Md. Hasmot Ali

3) Md. Mojor Ali

Date of Charge : 08.06.2018.

Date of Argument : 29.03.2019.

Date of Judgment : 04.04.2019.

#### **Appearance for the Parties**

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

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

#### JUDGMENT

1. The prosecution case in brief is that on 01.12.2017, an ejahar was lodged at the Mikirbheta P.S. alleging inter alia that on 27.12.2017 at 9 AM, while the 14 years old daughter of the informant was going to school, he suspects that some unknown persons kidnapped her, concealed her and committed rape upon her. On the basis of the said ejahar, Mikirbheta PS Case No. 428/2017 was registered under section 363 IPC r/w section 4 of the Protection of Children from Sexual Offences Act (herein after the POCSO Act), 2012 and investigation started. Upon completion of investigation,

charge-sheet was filed against the accused Md. Jainal Abedin u/s 363 IPC r/w section 4 of the POCSO Act, 2012 and against the accused persons Md. Hasmot Ali and Md. Mojor Ali u/s 363/34 IPC r/w section 4/18 of the POCSO Act, 2012.

2. Subsequently, vide order dated 08.06.2018, charges u/s 366(A)/34/376 IPC r/w section 4 of the POCSO Act, 2012 was framed against the accused Md. Jainal Abedin and charges u/s 366(A)/34 IPC was framed against the accused persons, Md. Hasmot Ali and Md. Mojor Ali. The charges upon being denied, led to commencement of the trial. At the trial, the informant and the prosecutrix was examined as PW-1 and PW-2 respectively, cross examined and discharged. In the context of the nature of evidence adduced by these two witnesses, the prosecution evidence was closed at that that stage and the accused persons were examined under section 313 of the Cr.P.C. The defence did not adduce any evidence.

## 3. <u>POINTS FOR DETERMINATION</u>

Whether the accused Md. Jainal Abedin is guilty of committing offences punishable u/s 366(A)/34/376 IPC r/w section 4 of the POCSO Act, 2012 and whether the accused persons, Md. Hasmot Ali and Md. Mojor Ali are guilty of committing offences punishable u/s 366(A)/34 IPC?

# **DISCUSSION, DECISION AND REASONS THEREOF**

- **4.** Heard learned public prosecutor for the State and Sri U C Roy and Sri N I Talukdar, the learned defence counsels for the accused persons. Perused the evidence and other relevant materials on record.
- **5.** Section 366 (A) IPC punishes the act of inducing a minor girl with intent that she may be forced or seduced into illicit intercourse with another person. 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 18 of the POCSO Act, 2012, punishes the offence of attempt to commit an offence punishable under the POCSO Act, 2012.

- **6.** During the trial, the prosecutrix adduced evidence as PW-2, in which she stated that she was aged 18 years at the time of the incident. She further deposed that the accused did not commit any bad act upon her. The father of the prosecutrix, who is the informant of the case adduced evidence as PW-2 in which he has not mentioned about any commission of rape / sexual assault upon his daughter, the prosecutrix.
- 7. In the context of the aforesaid evidence of the prosecutrix and the informant, specially the prosecutrix, the charges under section 376 IPC and section 4 of the POCSO Act, 2012 fails.
- **8.** Further, the prosecutrix as PW-2 has also stated in her deposition that on the day of the incident, she had voluntarily gone with the accused and that the accused persons had not taken her forcefully. In her deposition as PW-2, the informant has stated that after the incident, his daughter the prosecutrix told him that she had got introduced to the accused Jainal Abedin on phone and developed friendship with him and that thereafter, on the day of the incident she eloped with him. In his cross-examination, he stated that on the day of the incident his daughter the prosecutrix had gone with the accused Jainal to roam (*Phuliboloi*) and PW-2 has made no mention in this regard regarding the other accused persons.
- **9.** In the context of the aforesaid evidence of the informant and the prosecutrix, the charge under section 366 (A)/34 IPC also fails.
- **10.** Therefore, the prosecution case fails on account of inadequate evidence and the accused persons are entitled to be acquitted.

## ORDER

- **11.** On the basis of the evidence and relevant materials on record of the case, the accused persons Md. Jainal Abedin, Md. Hasmot Ali and Md. Mojor Ali stand acquitted. The accused persons, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **12.** Their bail bonds and sureties stand discharged.
- **13.** A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.P.C.
- **14.** Given under my hand and seal on this the 4<sup>th</sup> day of April, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

# **APPENDIX**

# **A. Prosecution witness**

- 1. PW-1 :- Samsul Hoque,
- 2. PW-2:- Prosecutrix.
- B. <u>Defence witness: Nil.</u>
- **B. Prosecution Exhibit:**
- 1. Ext.1: The ejahar.
- 2. Ext.2 :- The statement of prosecutrix recorded U/s 164 Cr. P.C.
- C. Defense witness: Nil.
- D. Defence exhibits :- Nil.

(P Das)

Special Judge, Morigaon