IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (POCSO) Case No. 35/2017 U/S 363 IPC r/w Section 4 of the POCSO Act

Present : Mr. P. Das

Special Judge, Morigaon, Assam.

State of Assam

-VS-

Md. Faijul Ali Accused

Date of Charge : 26.02.2018.

Date of Argument : 06.02.2019.

Date of Judgment : 06.02.2019.

Appearance for the Parties

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

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

JUDGMENT

- 1. The prosecution case in brief is that on 25.05.2017, one Md. Izzat Ali lodged an ejahar before the Jaluguti P. P. under Mikirbheta Police Station alleging inter-alia that on 23.05.2017, at night, at about 11.30 PM, the accused person namely, Faijul Ali had kidnapped his minor daughter and kept her confined at his house. Accordingly, Mikirbheta P.S Case No. 188/2017 was registered u/s 363(A) IPC and investigation was conducted.
- **2.** After completion of investigation, charge sheet was submitted against the accused person namely, Faijul Ali u/s 363(A) IPC r/w Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. Subsequently, charge was framed against the accused u/s 363 IPC r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012, by this Court through my learned

Predecessor. The charge upon being denied by the accused led to commencement of the trial. At the trial, prosecution side examined the informant who is the father of the prosecutrix, the prosecutrix herself and her mother as PW-1, PW-2 and PW-3 respectively. They were cross-examined by the defence.

3. Considering the nature of the evidence adduced by these three witnesses, prosecution evidence was closed, and thereafter, the accused was examined u/s 313 Cr.PC. Defence did not adduce any evidence.

4. **POINTS FOR DETERMINATION**

Whether the accused Md. Faijul Ali is guilty of committing an offence punishable u/s 363 IPC r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- **5.** Heard learned public prosecutor for the State and learned defence counsel for the accused person. Perused all the relevant materials from the record.
- 6. The father of the prosecutrix who is the informant of the case adduced evidence as PW-1. In his deposition he stated that one day at night he found his daughter missing and the door of the house was found open. Upon search on the next morning, he came to know that the accused had kidnapped his daughter and she was found at the house of the accused. Thereafter, with the help of police his daughter was recovered from the house of the accused. He stated that at the time of the incident, his daughter was aged 14 years. He further stated that upon being asked his daughter told him that the accused took her to his house at night and committed physical intercourse with her. He exhibited the ejahar as Ext. 1 and his signature thereon vide Ext. 1(1).

In cross-examination, he stated that he did not see taking away of his daughter by the accused though he found the door open.

7. The mother of the prosecutrix adduced evidence as PW-3. In her deposition she stated that one day at night when she woke up to go to toilet,

she found her daughter missing from her room and the door of the room of her daughter was open. On the next morning they came to know that her daughter was in the house of the accused. She stated that she does not know with whom her daughter went on the day of the incident.

In cross-examination she stated that the house of the accused is located very near to their house and earlier they had visiting terms and that in childhood prosecutrix used to go to his house.

8. The alleged victim girl adduced evidence as PW-2 in which she stated that at the time of incident she was aged 15 years. She further stated that she voluntarily went with the accused as she had love affairs with the accused. She stated that at the house of accused she slept with his mother and there was no illicit relationship with the accused at his house. She stated that she made statement before the Magistrate.

In cross-examination, she stated that she does not know as to what she stated before the Magistrate as she was in tension at that time.

- **9.** Though on the basis of the evidence of parents of the prosecutrix, especially the father of the prosecutrix, the informant, there are some implications against the accused but the evidence of the victim/prosecutrix does not implicate him at all. The alleged victim as PW-2 has clearly stated that there was no illicit relationship between her and the accused. Though her age is stated to be 15 years, she also stated that she voluntarily went with the accused person as they had love affairs.
- **10.** The evidence of the prosecutrix almost completely exonerates the accused. Some element of inducement should be present to fasten liability on an accused u/s 363 IPC but in this case such element is missing on the basis of the evidence of the prosecutrix. The testimony of the prosecutrix about illicit relationship also nullifies the charge against the accused u/s 4 of the POCSO Act.
- **11.** In this context, it is worth mentioning that it is well settled principle in criminal trial that if two views are possible, the one in favour of the accused has to be taken and he is to be given the benefit of doubt.

- **12.** Therefore, in the facts and circumstances and on the basis of the evidence on record, I am of the considered view that the evidence on record is grossly inadequate to prove the guilt of the accused beyond reasonable doubt.
- **13.** Consequently, the prosecution case fails due to lack of adequate evidence and the accused is entitled to be acquitted.

ORDER

- **14.** On the basis of the evidence and other relevant materials on record of the case, the accused Md. Faijul Ali stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.
- **15.** His bail bonds and sureties stands discharged.
- **16.** A copy of this judgement and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.
- **17.** Given under my hand and seal on this the 6th day of February, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

APPENDIX

Prosecution Witnesses:

PW-1 : Md. Izzat Ali.

PW-2 : Prosecutrix.

PW-3 : Musstt. Hasna Begum.

Defence Witness:

Nil.

Prosecution Exhibits:

1. Ext. 1 : Ejahar.

2. Ext. 1(1) : Signature.

2. Ext. 2 : Section 164 Cr.PC statement.

3. Ext. 2(1) to 2(2) : Signatures.

Defence Exhibits:

Nil.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

Special (POCSO) Case No. 35/2017

<u>06.02.2019:</u>

Accused Md. Faijul Ali 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 Md. Faijul Ali stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.

His bail bonds and sureties stands discharged.

A copy of this judgement 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