IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sess. Spl. Case No.12/2015 U/S 366 A/376 (2) (i) of IPC, read with Section 4 of POCSO Act.

Present : Md. M. Ahmed, Sessions Judge, Morigaon.

State of Assam

Vs

Sri Nabin Deka @ Bhabananda Deka.

Appearance for the Parties

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

Advocate for the accused :- Mr. M. C. Sarkar, Advocate,

Date of recording evidence :- 21.08.2015 and 25.01.2016.

Date of Argument :- 25.01.2016.

Date of Judgment :- 08.02.2016.

JUDGMENT

1. Prosecution case in brief is that on 21.10.2014 at around 3.00 P. M., the 14 (fourteen) years old girl of the informant Sri Paban Deka of village Chotabori under Jagiroad P.S. in the district of Morigaon (Assam) by the name Miss – X (real name is withheld to screen the victim from infamy), a student of Class-IX, while proceeding towards her house after attending school, the accused took her away by alluring her and he forcibly kept her confined at an undisclosed location. After inquiry, the informant came to learn that one Champa Deka was also involved in this incident. After three days of the occurrence, he filed an ejahar at Jagiroad P.S. to that effect.

2. On the basis of the said F.I.R. O/C Jagiroad P.S. registered a case vide Jagiroad P.S. Case No.339/14, U/s 366 (A) IPC against the afore-named accused and investigation was set in motion.

During investigation, the I.O. visited the place of occurrence, recovered the victim girl and subjected her to medical examination and her statement also recorded U/s 164 Cr.P.C. Thereafter, the I.O. collected the medical examination report of the victim girl and after completion of investigation and finding sufficient incriminating materials, the I.O. submitted charge-sheet against the afore-named accused person with allegation of offences punishable U/s 366 A/376 (2) (h) of IPC, read with Section 4 of POCSO Act. The accused was shown absconder in the charge-sheet. Later, the afore-named accused was arrested by the I.O. and he was produced before the learned Court below. Thereafter, the learned Court below furnished copies of relevant documents as mandate U/s 207 Cr.P.C. to the afore-named accused andthen, committed the case to this Court by finding it to be exclusive triable by this Court and upon receipt of the said case record, my learned predecessor in Court granted bail in favour of the afore-named accused. Subsequently, my learned predecessor having heard Ld. Counsel of both sides and basing upon materials on record, framed charge U/s 366 A/376 (2) (i) of IPC, read with Section 4 of POCSO Act and read over and explained the particulars of charge to the accused to which he absurd guilty and claimed for tried.

3. Point for determination:

- (i) In this instant case it is to be determined that if the present accused on the eventful day i.e. on 21.10.2014 at around 3.00 P.M. at Chotabori village under Jagiroad P.S. in the district of Morigaon induced the victim namely, Miss X, 14 years of age, when she returning back home from her school to accompanying him with intent that she might be forced to illicit intercourse and committed rape upon the victim and also subjected her to penetrative sexual assault against her will.
- 4. Prosecution in this case has examined as many as 3 (three) PWs including the victim and the informant, but none of them have

supported the prosecution case on material aspects. As such, evidence of prosecution side was closed. As no incriminating circumstances warrants against the present accused, the procedure for examining the accused U/s 313 Cr.P.C. was dispensed with for end of justice. The accused declined to adduce defence evidence.

5. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

6. In this case it is alleged by the prosecution that on the eventful day the afore-named accused induced the victim Miss - X, a girl of 14 years of age to go with him, while she was returning home from school with intent that she might be forced to illicit intercourse and he committed rape upon the victim and also subjected her to penetrative sexual assault against her will.

All such claims are nullified by the victim herself. She in her evidence, deposing as PW-2 has categorically stated that she was in love affairs with the accused. She was then more than 18 years of age, even they got married and now they are living as husband and wife peacefully and that was accepted by her parents also.

PW-3, the father of the victim also deposed likewise. He in his evidence has stated that there was love relation between his daughter and the accused and on the particular day his daughter eloped with the accused and thereafter, they got married and he accepted this relationship. This witness has further stated that his daughter was a major girl at the time of the incident and she voluntarily eloped with the accused, as she was in love affairs with him.

From the evidence of PW-1, Dr. (Mrs.) Rekha Bhuyan, who conducted medical examination of the victim has stated that the victim girl was between 15 to 16 years of age. She proves Ext.1 the medical report, which was drawn up by her. It would be helped to prosecution case, if the victim and the informant, the father of the victim have supported the prosecution case, but in this case both

of them declined to do so. Deposing as PW-2, Miss - X the victim has stated that she was in love affairs with the accused and on the particular day she voluntarily eloped with the accused and subsequently, they got married and now they are living as husband and wife.

That being the position, it is found that the prosecution has failed miserably to establish the case for commission of offences punishable U/s 366 (A)/376 (2) (i) of IPC, read with Section 4 of POCSO Act beyond all reasonable doubt, as alleged against the accused.

In the result, the accused is not found guilty for the offences punishable U/s 366 A/376 (2) (i) of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment delivered in the open Court on this 8th day of February, 2016 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1:- Dr. (Mrs.) Rekha Bhuyan,
- 2. PW-2: Sri Jupitara Deka,
- 3. PW-3: Sri Paban Deka,
- B. Defence witness: Nil.
- C. Prosecution Exhibit:
- 1. Ext. 1, the medical report.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.