IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

POCSO Case No. 02/2018 U/S 448/363/366(A) IPC r/w Section 4 of the POCSO Act

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Md. Rajiqul Islam Accused

Date of Charge : 03.04.2018.

Date of Argument : 21.06.2019.

Date of Judgment : 29.06.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. M. Rahman, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that on 22.03.2017 at about 8.00 PM, the accused, namely Md. Rajiqul Islam, son of Morom Ali of village Hahchora Gaon under Bhelowguri P.S. in the district of Morigaon had forcefully kidnapped the sister of the informant from his house in his absence. On 23.03.2017, the informant lodged a case before Bhelowguri P.S and accordingly, the O.C. of Bhelwoguri P.S. registered the case vide Bhelowguri PS case No. 40/17 U/S 363 IPC.
- **2.** After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 03.04.2018, charges were framed against the accused u/s 448/363/366(A) IPC r/w Section 4 of the Protection of Children from Sexual

Offences Act, 2012. The charge upon being denied by the accused led to commencement of the trial.

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

Whether the accused Rajiqul Islam is guilty of committing an offence punishable u/s 448/363/366(A) IPC r/w Section 4 of the POCSO 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. In this case, the prosecutrix adduced her evidence as PW-2 and the elder brother of the prosecutrix and the informant has adduced evidence as PW-1. Both of them were cross-examined and discharged. The elder brother of the informant/PW-1 Atikul Hussain stated in his evidence that the prosecutrix is his sister and the informant Anarul Islam was his younger brother and that after lodging of the case, the informant went to Kerala and he was in Kerala at the time of deposition. He further stated in his evidence that he knew the accused person. He stated in his evidence that at the time of the incident the prosecutrix was aged 18 years and that on the day of the incident, he found his sister the prosecutrix missing after she went to college and that thereafter he came to know that she had eloped with the accused pursuant to her love affair with him. In this regard, his brother, the informant had lodged the instant case. This witness proved the ejahar dated 23.03.2017 as Exhibit 1 and the signature of the informant - his brother which he knew, as Exhibit 1 (1). He further stated in his evidence that subsequently, their family members got the prosecutrix married to the accused. In cross-examination, he stated that presently his sister the prosecutrix and the accused are living together as husband and wife and that he has no objection if the accused is acquitted in this case.
- **6.** PW-2 is the prosecutrix and she stated in her evidence that at the time of the incident she was aged 18 years. She further stated that she had a love affair with the

accused, pursuant to which, she had eloped with him on the day of the incident and that her elder brother, the informant did not accept the same and lodged the instant case. She further stated that during investigation she was taken to the Doctor for medical examination which she refused and that she was also forwarded to the court for recording her statement before the magistrate, which she proved as Exhibit 2 and her signatures thereon as Exhibit 2 (1) and 2 (2). She further stated in her evidence that subsequently her family members got her married to the accused. In cross-examination, she stated that she had eloped with the accused voluntarily pursuant to her love affair with him and that he had not taken her forcefully. She further stated in her cross-examination that since she went with him, she has been living with him as husband and wife.

- **7.** Upon perusing and analyzing the prosecution evidence, I find that the prosecutrix as PW-2 and her brother as PW-1 have stated that she was aged 18 years at the time of the incident. PW-1 has stated about her elopement with the accused pursuant to her love affair and stated about they are being married and living together as husband and wife. The prosecutrix has stated in her evidence that she voluntarily eloped with the accused and she was not taken forcefully by the accused. She also stated that at present she is living with him as husband and wife and there is no mention in the evidence of the prosecutrix regarding commission of any sexual offence.
- **8.** Further, on the basis of the evidence on record, element of kidnapping per-se and/or kidnapping to commit illicit intercourse is also not made out. The evidence on record also does not make any offence of criminal trespass. Accordingly, the evidence on record adduced from prosecution side is grossly inadequate to prove any guilt of the accused with regard to the charges against him or any other minor penal section.
- **9.** Consequently, the prosecution case fails due to lack of evidence and thereby, entitling the accused to be acquitted.

ORDER

- **10.** On the basis of the evidence and relevant materials on record of the case, the accused Md. Rajiqul Islam 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 29th day of June, 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: Md. Atikul Hussain,
- 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

POCSO Case No. 02/2018

29.06.2019:

Accused Rajiqul Islam 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 Rajiqul Islam 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