## IN THE COURT OF THE SPECIAL JUDGE, MORIGAON, ASSAM

## Special Case No. 08/2017

(U/S 366(A) IPC, r/w Section 4 of the POCSO Act)

Present : Mr. D. K. Das Special Judge, Morigaon, Assam

State of Assam

-VS-

Md. Mahabbat Ali ...... Accused

.

Date of Charge : 15.05.2017.

Date of recording evidence : 18.05.2017.

Date of Argument : 18.05.2017.

Date of Judgment : 19.05.2017.

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

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

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

### <u>JUDGMENT</u>

- 1. In this case, the prosecution has alleged that a 15 (fifteen) years old girl became a victim of kidnapping and penetrative sexual assault at the hand of the accused. The accused is one Md. Mahabbat Ali, son of Late Mansur Ali, resident of village Patuakata (Malinpur) under Mikirbheta Police Station in the District of Morigaon (Assam). The informant is one Md. Tamiz Ali who is a resident of the same locality. The informant is the father of the victim 'X' (the real name of the victim kept concealed to save her from infamy).
- **2.** The prosecution case in brief is that, on 31.03.2015, at around 7.45 AM, while the minor daughter of the informant was going to the house of her uncle from her house,

the above-named accused had kidnapped her from the village road. It is also alleged that the accused had confined his daughter at an unknown place and he could not find her out despite searching at many places. On the next date, i.e. on 01.04.2015, the informant lodged an ejahar at the Jaluguti PP. On receipt of the ejahar, the then In-Charge of Jaluguti PP made GD Entry vide Jaluguti PP G.D. Entry No. 03, dated 01.04.2015, and forwarded the same to the then Officer-in-Charge, Mikirbheta Police Station for registering a case under proper Sections of law. Accordingly, the then Officer-in-Charge, Mikirbheta Police Station after receipt of the same registered a case vide Mikirbheta P.S. Case No. 122/2015 u/s 366(A) IPC. Thereafter, ASI, Nripen Chandra Bhuyan took pre-steps and SI, Rebot Chandra Baruah was endorsed with the investigation of the case.

**3.** The investigation was set in motion. During the course of investigation, the Investigating Officer visited the place of occurrence and drew the sketch map of the place of occurrence, examined the victim as well as other material witnesses and also got the victim medically examined. The victim girl was also produced before the Magistrate to record her statement u/s 164 Cr.PC. The accused person was also arrested. After completion of investigation, the Investigating Officer had submitted charge-sheet against the above-named accused with allegation of offences punishable u/s 366(A) of IPC, read with Section 4 of the POCSO Act. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. Thereafter, the accused person appeared before this Court and he was let off on court bail. The accused person attended before this Ld. Court and he was furnished with the copies of relevant documents as mandated u/s 207 Cr.PC.

Thereafter, upon hearing Ld. Counsel of both sides and considering the materials on record, charges u/s 366(A) of IPC read with Section 4 of the POCSO Act were framed against the accused and the same were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

### 4. Point for determination:

(i) Whether the accused on 31.03.2015, at around 7.45 AM, at village Potuakata under Mikirbheta Police Station in the district of Morigaon, induced the victim, a

minor girl of about 15 years of age, while she was going to the house of her uncle with intent that she might be or knowing that she is likely to be forced or seduced to illicit intercourse with him?

- (ii) Whether the accused on the same day, time and place committed penetrative sexual assault upon the victim, a minor girl?
- 5. In this case prosecution has examined two witnesses i.e. the claimant as PW-1 and the victim as PW-2 who are the most vital witnesses of this case. But their evidence did not support the prosecution case on material aspects as both of them have completely negated the prosecution case. In such circumstances, prosecution was not willing to examine the remaining witnesses and at the instance of the prosecution, its further evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted u/s 313 Cr.PC. was also dispensed with for ends of justice.
- **6.** I have heard arguments 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**

7. In the instant case, it is alleged by the prosecution that, on the eventful day i.e. on 31.03.2015, the above-named accused had kidnapped the minor daughter of the informant i.e. the victim who was 15 years old at the time of the incident, from the village road, while she was going to her uncle's house from her house.

To prove the case, the prosecution has examined the informant, who is the father of the victim girl as PW-1. PW-1 in his evidence has stated that the victim 'X' is his daughter and also knows the accused Md. Mahabbat Ali. He lodged this case about 2/3 years ago and at the time of occurrence of the incident, his daughter i.e. the victim was a matured girl. PW-1 has further stated that there was love affair in between his daughter i.e. the victim and the accused, but he was not aware of that. And on the date of occurrence of the incident, his daughter eloped with the accused out of their love

affairs, and subsequently, they got married. He has exhibited the ejahar lodged by him as Ext.1 and his signature on the same vide Ext. 1(1).

During cross-examination, he has stated that he lodged the case against the accused person out of misunderstanding. The ejahar was written by another person and he simply put his signature on the ejahar. He further asserted that the accused is innocent and now his daughter 'X' has been leading a happy conjugal life with the accused.

**8.** PW-2, the victim girl in her evidence has stated that the informant is her father and the accused is her husband. She further stated that at the time of occurrence of the incident, she was more than 18 years of age. PW-2 stated that she had love affair with the accused, and on the particular day of the incident, she eloped with the accused as her family members did not agree to her relationship with the accused. Therefore, her father lodged the present case against the accused. PW-2 further stated that subsequently, she got married with the accused and herself went to the house of her father who gave his consent to their relationship later on. Presently she has been leading happy conjugal life with the accused.

During cross-examination, PW-2 has asserted that the accused did not kidnap her rather; she went with the accused at her own will as she had love affair with the accused since three years prior to the incident. Now, her parents have also agreed to their relationship and they have no objection against the accused person.

- **9.** Thus, It is found that none of the witnesses including the most vital witnesses i.e. the complainant (PW-1) and the victim (PW-2) examined by the prosecution have not stated anything as regards kidnapping and penetrative sexual assault being allegedly committed by the accused.
- **10.** From the evidence on record, it is revealed that the material part of the prosecution case remained un-substantiated, as the victim herself stated that the accused did nothing wrong to her and out of her love affairs with the accused, she voluntarily went with the accused and got married with the him and now she has been leading a happy conjugal life with the accused. So, it is found that the material witnesses

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of this case i.e. PW-1 and PW-2 did not support the prosecution allegation in its material

aspects. Section 232 Cr.PC mandates an acquittal of the accused from an offence, which

states that "If, after taking the evidence for the prosecution, examining the accused and

hearing the prosecution and the defence on the point, the Judge considers that there is

no evidence that the accused committed the offence, the Judge shall record an order of

acquittal."

11. In view of the above discussions and in view of Section 232 Cr.PC, I have found

that the prosecution has failed to establish the guilt of the accused beyond any

reasonable doubt. In the result, the accused is not found guilty for the offences

punishable u/s 366(A) of IPC, read with Section 4 of the POCSO Act, and as such, he is

acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this 19<sup>th</sup> day of May,

2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon, Assam

## **APPENDIX**

# **A. Prosecution witness**

- 1. PW-1, Md. Tomiz Ali @ Tomiz Uddin,
- 2. PW-2, Musstt. Hina Rabbani.

# B. <u>Defence witness</u>:

Nil.

# **C. Prosecution Exhibits:**

1. Ext. 1 : The ejahar

2. Ext. 1(1) : Signature of PW-1.

3. Ext. 2 : 164 Cr.PC statement of the victim.

4. Ext. 2(1) : Signature of the victim.

### D. Defence exhibits:

Nil.

Sessions Judge, Morigaon, Assam