IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (POCSO) Case No. 22/2018 U/S 363 IPC r/w Section 4 of the POCSO Act

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Md. Julfikar Ali @ Julfikar Ali Bhattu Accused

Date of Charge : 23.10.2018.

Date of recording evidence : 27.11.2018.

Date of Argument : 06.12.2018.

Date of Judgment : 06.12.2018

Appearance for the Parties

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

Advocate for the Accused :- Mr. A. Ahmed, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that on 16.02.2018 at about 6.00 PM, the accused, namely Md. Julfikar Ali @ Julfikar Ali Bhattu, son of Md. Salam Uddin Ali of village Mairadhaj under Dhing P.S. in the district of Nagaon had allegedly kidnapped the minor sister of the informant from the courtyard of his house with the help of other persons and confined her in some unknown place. On 15.02.2018, the informant lodged a case before Mikirbheta P.S and accordingly, the O.C. of Mikirbheta P.S. registered the case vide Mikirbheta PS case No. 50/18 U/S 363/368/34 IPC.
- 2. After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 23.10.2018, charges were framed against the accused u/s 363 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. POINTS FOR DETERMINATION

Whether the accused Julfikar Ali @ Julfikar Ali Bhutto is guilty of committing an offence punishable u/s 363 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 all the relevant materials from the record.
- **5.** Section 363 IPC punishes the act of kidnapping a minor from lawful guardianship. 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.
- 6. In this case, the prosecutrix adduced her evidence as PW-2 and the informant who is the elder brother of the prosecutrix has adduced evidence as PW-1. Both of them were cross-examined and discharged. The accused is the cousin brother of the prosecutrix. The informant /PW-1 stated in his evidence that at the time of the incident, the prosecutrix was aged 18 years. The prosecutrix/PW-2 also stated in her evidence that her age at the time of the incident was 18 years. Section 2 of the Protection of Children from Sexual Offences Act, 2012 defines that to prosecute any person under the Protection of Children from Sexual Offences Act, 2012, the victim should be below 18 years. Therefore, on the basis of evidence of the aforesaid informant and prosecutrix and the age of the prosecutrix at the time of the alleged incident, charge under Section 4 of the Protection of Children from Sexual Offences Act, 2012 falls through and the accused is entitled to be acquitted of the said charge.
- 7. The informant/PW-1 stated in his evidence that he lodged the instant case thinking that his sister/prosecutrix was missing though she had actually gone to visit a Mela at Sivsagar along with her friends and the accused. In his cross-examination, PW-1/informant stated that the case was lodged out of misunderstanding and that the accused is innocent.
- **8.** The prosecutrix/PW-2 also stated in her evidence that at the time of the alleged incident, she along with her three female friends had gone to visit a Mela at

Sivsagar. In her cross-examination, the prosecutrix has stated that the accused is innocent.

- **9.** On the basis of the aforesaid evidence-on-record, ingredients of kidnapping from the lawful guardianship does not exist and the charge under Section 363 IPC also falls through, thereby, entitling the accused to be acquitted.
- **10.** Consequently, the prosecution case fails due to lack of any evidence and the accused is entitled to be acquitted.

ORDER

- **11.** On the basis of the other evidence and relevant materials on record of the case, the accused Md. Julfikar Ali @ Julfikar Ali Bhattu stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.
- **12.** His bail bonds and sureties stands extended for six months in terms of the provisions of Section 437-A Cr.PC.
- **13.** 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.
- **14.** Given under my hand and seal on this the 6th day of December, 2018.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

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Special (POCSO) Case No. 22/2018

06.12.2018:

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

His bail bonds and sureties stands extended for six months in compliance with Section 437-A Cr.P.C.

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.

Sessions Judge Morigaon, Assam