IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

<u>Spl. (POCSO) Case No.18/2017</u> U/S 342/376 (2)IPC, R/W Section 4 of POCSO Act

Present : Mr. Dhrupad Kashyap Das Sessions Judge, Morigaon.

State of Assam

Vs.

Sri Madhab Saikia

..... Accused Person

Date of Charge :- 22.08.2017.

Date of recording evidence :-31.10.2017, 14.11.2017.

Date of Argument :-14.11.2017.

Date of Judgment :-15.11.2017.

Appearance for the Parties

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

Advocate for the accused: - Mr. B.C. Saikia, Ld. Advocate.

JUDGMENT

1. The prosecution case in brief is that on 29.01.2017, at about 4.30 PM, the accused namely, Madhab Saikia, (S/o Lt. Ram Nath Saikia of village Lukakuchi, under Morigaon PS in the district of Morigaon), by showing affection and care took the minor daughter of the informant to the handloom (Tatshal) house and committed rape upon her. Thereafter, the minor daughter of the informant narrated the incident to her parents and when they asked the accused about the incident, he confessed his guilt. Hence the case.

On the next day i.e. on 30.01.2017, the informant went to the Morigaon PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Morigaon PS registered a case vide Morigaon PS Case No.43/2017, U/s 342/376(i)of IPC r/wSection 4/5 of the POCSO Act.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence and drew sketch map of the place of occurrence. The I.O. examined the material witnesses and got the victim medically examined. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused with allegation of offence punishable U/s 342/376(i) IPC r/w Section 4 of the POCSO Act, showing the accused person is detained in jail custody. Accordingly, the accused personappeared before this Sessions Courtand he was let off on court bail. Thereafter, this court furnished copies of relevant documents as mandate U/s 207 of Cr.PC. to the accused person. Having heard Ld. Counsel of both sides and basing upon the materials on record, framed charges U/s 342/376 (2) IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused person to which he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused personon the eventful day i.e. on 29.01.2017 atabout 4.30 PM at village Lukakuchi under Morigaon PS, wrongfully confined the minor daughter of the informant?
- (ii) Whether the accused person on the same day, time and place committed rape with the minor daughter of the informant?
- (iii) Whether the accused person on the same day, time and place, committed an offence of penetrative sexual assault as defined U/s 3/4 of the POCSO Act with the minor daughter of the informant?

- 3. In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the informant, who is thefather of the victim as PW-1 and the PW-2, who is the aunt of the victim. But their evidence did not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the remaining witnesses and at the instance of the prosecution its evidence stands closed. Having found no incriminating materials against the accused, the examination of accused as warranted U/s 313 Cr.P.C. was dispensed with for the ends of justice. The accused declined to adduce defence evidence.
- **4.** I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

5. <u>DISCUSSION, DECISION AND REASONS THEREOF</u>

In this case, it is alleged by the prosecution that on the eventful day, the above-named accused personcommitted rape upon the minor daughter of the informant by showing affection and care.

(a) To prove this fact, the prosecution has examined PW-1,Sh. Pratap Bora, who in his evidence stated that he lodged the case. The victim girl is his daughter who was 7 years old at that time. He knows the accused person who is his relative. On the date of the occurrence of the incident, the accused person came to their house and at the relevant time he was absent. The accused person after coming to their house showed affection and care to his daughter. The accused took his daughter on his lap and kissed on her cheek out of affection and care. However, his other family members suspected to that incident that the accused wanted to do something with his daughter. Thereafter, when he returned back to his house, his other family members as well as neighbors insisted him to lodge the case and so, he lodged the case. Ext.1 is the ejahar and Ext. 1(1) is his signature. However, the ejahar was not written by him therefore, he does not know the contents of the same. He know this much only.

In his cross-examination, PW-1 stated that he did not have any intention to lodge any case against the accused person. Later on, he and his family members understood that the accused did not come to their house with any bad intention. He used to come to their house frequently as he is their relative. He always shows love and affection to his daughter whenever he met them.

- (b) PW-2,Anu Bora, in her evidence stated that the case was lodged by her brother-in-law. Victim X is her niece. At the time of lodging the case she was 5 years old. The accused person is very close to us. On the date of occurrence of the incident accused person came to their house and at that time Victim X was playing in their compound. As soon as the accused person wanted to take her on his shoulder out of affection, then the said girl (victim) started shouting and crying. Thereafter, they came out and try to specify their girl (victim). However, when the village people came to know the incident they took the matter otherwise. They insisted the informant to lodge a case against him. But the case was lodged out of misunderstanding. The accused was innocent. Her niece Victim X is too small to depose before the court.
- **6.** Thus, we have found that none of these two witnesses including the PW-1 (i.e. the informant), have not stated anything as regards to committing rape and penetrative sexual assault being allegedly committed by the accused.
- of the prosecution case remained un-substantiated, asPW-1, who is the informant (father of the victim) of this case and PW-2 victim's aunthave clearly statedthat the accused did nothing wrong to the victim and the informant was insisted to lodge the case by the neighbors of their villageand the accused was innocent. So, we have found that the most material witnesses of this case as PW-1& PW-2 did not support the prosecution allegation in its material aspects. Section 232 Cr.P.C. 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

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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."

8. In view of the above discussion and in view of Section 232 Cr.P.C., I have

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

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

the offences punishable U/s 342/376 (2)of IPC, r/w Section 4 of POCSO Act and

as such, he is acquitted and set him at liberty. His bail bond shall remain

extended till next six months.

Judgment is delivered and pronounced in the open Court on this 15th day

of November, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge Morigaon.

Special Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1 :- Sri Pratap Bora
- 2. PW-2 :- Smt.. Anu Bora
- B. <u>Defence witness: Nil.</u>
- **C. Prosecution Exhibit:**
- 1. Ext.1- Ejahar.
- **D. Defence exhibits :- Nil.**

Special Judge, Morigaon.