IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (POCSO) Case No. 61/2018 U/S 363 IPC r/w Section 4 of the POCSO Act

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Ranjit Deka @ Shaktiman Deka Accused

Date of Charge : 31.10.2018.

Date of recording evidence : 04.02.2019.

Date of Argument : 07.03.2019.

Date of Judgment : 20.03.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. A. Salam (Sr.), Ld. Advocates.

Mr. A. Rahman Mr. D. Kalita

JUDGMENT

1. The prosecution case in brief is that on 17.06.2017 at about 4.00 PM, when the minor daughter of the informant went to the river side of the Brahmaputra, the accused, namely – Ranjit Deka @ Shaktiman Deka, son of Mileswar Deka of village Kathoni Tarabori under Laharighat P.S. in the district of Morigaon had allegedly kidnapped her by way of inducement while she was returning to her house. On 20.06.2017, the informant lodged a case before Laharighat P.S and accordingly, the O.C. of Laharighat P.S. registered the case vide Laharighat PS case No. 204/17 U/S 366(A) IPC.

2. After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 31.10.2018, 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. <u>POINTS FOR DETERMINATION</u>

Whether the accused Ranjit Deka @ Shaktiman Deka 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 the relevant materials on 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.
- In this case, the prosecutrix adduced her evidence as PW-2 and the informant who is the mother of the prosecutrix has adduced evidence as PW-1. Both of them were cross-examined and discharged. The informant /PW-1 stated in her 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 her evidence that she lodged the instant case finding that her daughter/prosecutrix was missing and since she could not find her she lodged the case out of anger. In her cross-examination, PW-1/informant stated that her daughter/prosecutrix voluntarily eloped with the accused and the accused did not take her daughter forcefully. Both the accused and the prosecutrix are now leading a conjugal life together.
- 8. The prosecutrix/PW-2 also stated in her evidence that there was love affair between her and the accused, but her parents were reluctant to solemnize marriage with the accused and therefore, she eloped with the accused. In her cross-examination, the prosecutrix has stated that her parents accepted their relationship and now both of them are living as husband and wife and also they are having a child aged 9 months. She stated that the accused did not take her away forcefully. She also stated that accused is innocent and has no objection in case he is acquitted. The aforesaid evidence on record does not make out the ingredients of any sexual offence.
- **9.** On the basis of the aforesaid evidence-on-record, the ingredients of kidnapping from the lawful guardianship does not exist as well 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.

<u>ORDER</u>

- **11.** On the basis of the evidence and relevant materials on record of the case, the accused Ranjit Deka @ Shaktiman Deka stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **12.** His bail bonds and sureties stand discharged.
- **13.** 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.

14. Given under my hand and seal on this the 20th day of March, 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: Smti. Priyalata Medhi,
- 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

Special (POCSO) Case No. 61/2018

20.03.2019:

Accused Ranjit Deka @ Shaktiman Deka 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 Ranjit Deka @ Shaktiman Deka 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