IN THE COURT OF THE SPECIAL JUDGE, MORIGAON Special Sessions (POCSO) Case No. 37/2017

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Md. Inamul Hoque Accused

Date of Charge : 22.10.2018.

Date of Argument : 18.03.2019.

Date of Judgment : 11.04.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. Rajaul Karim, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that on 07.09.2016 at about 12.30 AM, when the informant-cum-victim was sleeping on her bed, accused Inamul Hoque, son of Md. Abdul Mutaleb of village Dewaguri under Laharighat P.S. in the district of Morigaon had entered into her house by opening the window of her house and took her 25 meters away from her house and committed rape upon her. On 08.09.2016, 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. 388/16 U/S 4 of the POCSO Act, 2012.
- **2.** After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 22.10.2018, charge was framed against the accused u/s 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 Md. Inamul Hoque is guilty of committing an offence punishable u/s 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 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-1. Considering the nature of the evidence adduced by the prosecutrix and after hearing the learned prosecution, the prosecution evidence was closed after the evidence of the prosecutrix. The prosecutrix/PW-1 stated in her evidence that her age at the time of the incident was 18 years. She further stated in her evidence that she had a love affair with the accused, which was not approved by her parents and that thereupon she had eloped with him voluntary and when she came back home, her parents forced her to lodge this case. The prosecutrix further stated in her evidence that after lodging of this case, she got married to the accused and presently staying with him as his wife. She proved as Exhibit 1, the ejahar lodged by her and her signature thereon as Exhibit 1 (1). She also proved her statement recorded before the learned Magistrate as Exhibit 2 and her signatures thereon as Exhibit 2 (1) and 2(2). The prosecutrix further stated in her evidence that she does not yet have children from the marriage with the accused and that after she voluntarily eloped with the accused, he did not commit any illicit intercourse with her. The prosecutrix was cross examined by the defence and in crossexamination she stated that now, she and the accused are married and living a conjugal life together. She further stated in her cross-examination that the accused is innocent and should be acquitted.

- **7.** Therefore, on the basis of aforesaid evidence of the prosecutrix, the ingredients of Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, with which the accused has been charged with in this trial, are not made out.
- **8.** Consequently, the prosecution case fails due to lack of evidence and the accused is entitled to be acquitted.

ORDER

- **9.** On the basis of the evidence and relevant materials on record of the case, the accused Md. Inamul Hoque stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **10.** His bail bonds and sureties stand discharged.
- **11.** 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.
- **12.** Given under my hand and seal on this the 11th day of April, 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 :- 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 Sessions (POCSO) Case No. 37/2017

11.04.2019:

Accused Md. Inamul Hoque 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. Inamul Hoque 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