IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

POCSO Case No. 07/2018

Present: Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

Sri Syamal Saikia Accused

Date of Charge : 10.12.2018.

Date of Argument : 14.03.2019.

Date of Judgment : 06.04.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. P R Borah, Ld. Advocate.

JUDGMENT

1. The prosecution case in brief is that on 21.08.2015 an ejahar was lodged at the Jagiroad police station alleging inter alia that the accused had sexual intercourse with the 17 years old daughter of the informant, leading to her pregnancy. On the basis of the ejahar, Jagiroad PS Case No. 355/2015 was registered under section 376/406 IPC and investigation started. After completion of investigation charge sheet was filed against the accused under section 376/406 IPC r/w section 4 of the POCSO Act, 2012. Subsequently vide order dated 10.12.2018 charge was framed against the accused under section 4 of the POCSO Act, 2012. The charge upon being denied by the accused, led to commencement of the trial.

2. At the trial, the prosecutrix and the informant were examined as PW-1 and PW-2 respectively. The prosecutrix was cross examined by the defence, but the informant as PW-2 was not cross examined by the defence. In the context of the nature of evidence adduced by these two witnesses, the prosecution evidence was closed at this stage and the accused was examined under section 313 of the Cr.P.C. The defence did not adduce any evidence.

3. <u>POINTS FOR DETERMINATION</u>

Whether the accused Syamal Saikia is guilty of committing an offence punishable u/s 4 of the Protection of Children from Sexual Offences 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 evidence and other 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.
- In her evidence as PW-1, the prosecutrix has stated that at the time of the incident she was 19 years and that she eloped with the accused and subsequently got married to him. She further stated that the accused, who is her husband now, is innocent and that he has not committed any offence against her. The prosecutrix also stated in her deposition that now she and the accused are leading a conjugal life together as husband and wife and that they also have a daughter. The mother of the prosecutrix, who was the informant of the case, in her deposition as PW-2 stated that at the time of the incident, her daughter the prosecutrix was aged 18 years and that she had eloped with the accused person pursuant to her love affair with him. She further stated that subsequently she accepted their relationship and now she also has a granddaughter from them.

7. On the basis of the aforesaid evidence adduced by the prosecutrix and the informant, the charge under section 4 of the POCSO Act, 2012 falls through. Therefore, the prosecution case fails due to lack of evidence and the accused person is entitled to be acquitted.

ORDER

- **8.** On the basis of the evidence and relevant materials on record of the case, the accused Syamal Saikia stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **9.** His bail bonds and sureties stand discharged.
- **10.** 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.
- **11.** Given under my hand and seal on this the 6th 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,
- 2. PW-2 :- Smti. Anima Mandal
- B. <u>Defence witness: Nil.</u>
- **B. Prosecution Exhibit:**
- 1. Ext.1: The statement of prosecutrix recorded U/s 164 Cr. P.C.
- 2. Ext.2 :- The ejahar
- C. Defense witness: Nil.
- D. Defence exhibits :- Nil.

(P Das)

Special Judge, Morigaon

POCSO Case No. 07/2018

06.04.2019:

Accused Syamal Saikia 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 Syamal Saikia 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