IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.35/2016
U/S 366 A IPC, R/W Section 4 of POCSO Act

Present: Mr. Dhrupad Kashyap Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Gulzar Hussain Accused

Date of Charge :- 10.01.2017.

Date of recording evidence :- 10.03.2017, 02.05.2017 & 20.05.2017.

Date of Argument :- 30.05.2017.

Date of Judgment :- 31.05.2017.

Appearance for the Parties

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

Advocate for the accused:- Mr. A. Salam, Ld. Advocate,

<u>JUDGMENT</u>

1. Prosecution case in brief is that on 25.04.2016, the accused Md. Gulzar Hussain, son of Sukur Ali of village Balidonga under Bhuragaon P.S. in the district of Morigaon (Assam) along with others kidnapped the minor daughter of the complainant, Miss-X (the real name of the victim kept concealed to save her from infamy), aged about 15 years, a student of Class – VIII, while she was returning back from Nellie Girls M. E. School. It is also alleged in the complaint that on 05.06.2016, the father of the above-named accused informed the complainant over Mobile phone that her minor daughter was kidnapped by her son (the above-named accused) and, if she (the complainant) came to their

house, they will hand over her daughter to her. Thereafter, on 06.06.2016, when she (the complainant) along with others went to the house of the accused, then, the above-named accused along with others hidden the victim in an undisclosed place and they drove her (the complainant) out from their house by rebuking her using filthy language. After about one and half months of the incident, the complainant went to Morigaon Court and she lodged a complaint petition before the learned C.J.M., Morigaon. The learned C.J.M., Morigaon forwarded the same to the O/C of Jagiroad P.S. to register a case and for investigation. Accordingly, the then O/C Jagiroad P.S. after receipt of the same registered a case vide Jagiroad P.S. Case No.297/2016, U/s 366 (A)/34 IPC.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence. Thereafter, the I.O. searched for the victim girl and recovered the victim. The I.O. examined the material witnesses and also got the victim medically examined and produced the victim girl before the Magistrate for recording her statement U/s 164 Cr.P.C. The I.O. arrested the accused. 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 offences punishable U/s 366 (A) of IPC, read with Section 4 of POCSO Act. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. At the time of submitting the charge-sheet, the accused was languishing in jail custody. Subsequently, he was let off on court bail and thereafter, the present accused attended before the Ld. Court and he was furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record framed charges U/s 366 (A) of IPC, read with Section 4 of POCSO Act, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

2. Point for determination:

Whether the above-named accused on the eventful day i.e. on 25.04.2016 at village Dohutihabi under Jagiroad P.S. in the district of Morigaon, induced the victim (the minor daughter of the informant) to go from her school with him with intent that the said girl may be or knowing that it is likely that the girl will be forced to illicit intercourse with him?

Whether the above-named accused on the same day, time and place or after that committed penetrative sexual assault upon the victim, a minor girl ?

3. In this case prosecution has examined 4 (four) PWs including the most material witnesses of this case, the complainant as PW-1 and the victim as PW-2. 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 ends of justice. The accused declined to adduce defence evidence.

I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

4. In this case, it is alleged by the prosecution that on the eventful day the above-named accused along with others kidnapped the daughter of the complainant i.e. the victim, a minor girl, from the village road, while she went to her school.

To prove this fact, the prosecution has examined PW-1, the complainant. She in her evidence stated that she was the informant of this case. The victim Miss- X is her daughter. She knows the accused person. She came to know the accused person after the incident. PW-1 further stated that the alleged incident occurred about one year ago. At the time of occurrence of the incident, her daughter was 16 years old and was studying in Class-VIII. On the date of occurrence of the incident, her daughter went to her school to appear in the examination. However, she did not return from school and went missing. After two months, she got a phone call from her daughter who told her about her whereabouts. She told her over phone that, she is staying in village Balidunga with the accused person, who kept her with him. Thereafter, she went to the house of the accused person at Balidunga village. But the accused person did not allow her to meet her daughter and chased her out. Then, PW-1 came back home and lodged a complaint in the court regarding the incident. The said complaint was forwarded to Police Station for taking necessary action. The case was registered and police brought both her daughter and the accused to the Police Station. Police handed over her daughter to her. On being asked, her daughter told her that the accused person forcefully took her to his house from school. PW-1 proved Ext.1 is her complaint where she put her thump impression.

In cross-examination, PW-1 stated that she lodged the complaint after two months of the occurrence of the incident. Since, she did not find her daughter for two months, therefore, there was delay in lodging the complaint. She has not seen under what circumstances her daughter went missing. She did not see the occurrence of the incident. PW-1 denied all the suggestions put to her by the defence.

PW-2, the victim girl, she in her evidence stated that the informant is her mother. She knows the accused. The alleged incident occurred on 25th April, 2016. On the date of occurrence of the incident, she went to school to appear in her examination. At that time, she was studying in 8th standard

and her age was 16 years. PW-2 further stated that after appearing in examination, while she was coming from school, the accused person appeared there and forcefully took her with him. The accused person took her to Jagiroad, where she was kept for three days. The accused kept her in the house of his sister at Jagiroad. During her stay at Jagiroad, the accused committed sexual intercourse with her without her consent. From Jagiroad the accused person took her to the house of one Saiful at Pachali. There also accused committed sexual intercourse with her without her consent. Thereafter, the accused took her to Mayong Sidhaguri, where she was kept for many days. After some days, the accused took her to his house at Balidunga village. She wanted to come to her house but the accused did not allow her to come. She did not have any scope to inform her mother. PW-2 further stated that she tried to escape from the custody of the accused, but, she failed. The accused had beaten up her for her attempt to escape from his house. During those periods, the accused committed sexual intercourse with her without her consent. One day, the accused forgot to carry his mobile phone. So, she somehow got his mobile phone and called her mother from the mobile phone. She informed her mother over phone about the incident. PW-2 further stated that after few days, a team of police came to the house of the accused and brought her and the accused person to the Police Station. Thereafter, she was handed over to her mother by the Police after doing necessary formalities. Police asked her about the incident. The Police personnel produced her before Medical officer for examination. She was also produced before the Magistrate. She stated the same thing before the Magistrate. PW-2 proved Ext. 2 is her statement made before the Magistrate, wherein Ext. 2(1), 2(2), 2(3) and 2(4) are her signatures.

In cross-examination, PW-2 stated that she knows the accused Guljar Hussain for many years. They used to talk with each other over phone and love affair was also developed between them. She further stated that the accused person did not take her forcefully. At the time of occurrence of the incident, she was matured girl. She went with the accused with her own free will. Later on, she came to know that the accused was a poor boy then

she left him. She further stated that out of anger, she deposed against the accused on previous occasions. She has no objection if the accused is released and her mother lodged this case out of misunderstanding. Later on, her mother also understood that accused was innocent. She (PW-2) had entered into a physical relationship with accused with her own free will. However, she stated before Magistrate according to the wish of her mother. PW-2 further stated that her mother would not have lodged this case, if the accused would have married her. At the time of occurrence of the incident, she was more than 18 years. At present she is 20 years old.

PW-3 is Dr. Jutika Baidya, she in her evidence that on 28.06.2016, she was posted as Medical and Health Officer at Morigaon Civil Hospital. On that day, she examined one lady, namely – Sumeya Khatun, daughter of Md. Abdul Hasim of village Nellie under Jagiroad P.S. The patient, who she examined, has disclosed that on 25.04.2016, she went to Bhuragaon with one Gulzar Hussain and stayed together for two months. She also disclosed that during that period they had physical relationship. PW-3 further stated that she examined the said patient upon police requisition. During examination, she did not find any mark of violence on the body of the said patient and also did not find recent symptoms of sexual intercourse. During examination, she assumed the clinical age of the victim girl around 16/18 years. At that time, the patient refused to do X-Ray test. PW-3 proved Ext.3 is the medical report, wherein Ext.3 (1) is her signature.

PW-4 is Md. Abdul Razzak, he in his evidence stated that he knows the complainant Musstt. Amina Khatun and the victim girl Miss-X. He also knows the accused person Gulzar Hussain. PW-4 further stated that he heard that the victim girl eloped with the accused person due to love affair. However, the mother of the victim girl lodged the case against the accused person.

- 5. Upon critical evaluation of the evidence of the PWs, we have found that none of the witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. complainant and victim) examined by the prosecution have stated anything as regards kidnapping and penetrative sexual assault being allegedly committed by the accused.
- 6. Considering the evidence on record, we have found that the material part of the prosecution case remained un-substantiated, as the victim herself stated that the accused did nothing wrong to her and out of her love affairs with the accused, she voluntarily went with the accused and have physical relationship with him. So, we have found that the most material witness 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 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."
- 7. 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 is not found guilty for the offences punishable U/s 366 (A) of IPC, read with Section 4 of POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this $31^{\rm st}$ day of May, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

- 1. PW-1: Musstt. Amina Khatun,
- 2. PW-2 :- Musstt. Sumaya Khatun,
- 3. PW-3 :- Dr. Jutika Baidya,
- 4. PW-4:- Md. Abdul Razzak.
- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit:
- 1. Ext.1 :- the complaint petition.
- 2. Ext.2:- the statement of the victim recorded U/s 164 Cr. P.C.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.