SPECIAL SESSIONS CASE NO. 10 OF 2016

Present: Utpal Prasad, AJS Sessions Judge Karimganj at Karimganj

01.02.2018

ORDER

The accused Shri Najim Uddin is present with his learned Counsel.

Prosecution witness number 1 has been discharged after examination-in-chief and cross-examination on behalf of the accused.

Vide petition number 222 dated 01.02.2018, learned Public Prosecutor has intimated that the 3 witnesses mentioned therein are not in a position to come.

List the case on 07.07.2018, 11.07.2017 and 31.07.2018 for further evidence of the prosecution. Prosecution shall take steps for summoning 2 witnesses on each of the dates with endorsement of the corresponding issue numbers in the margin of the order sheet.

Sessions Judge Karimganj

SPECIAL SESSIONS CASE NO. 10 OF 2016

Present: Utpal Prasad, AJS Sessions Judge Karimganj at Karimganj

11.07.2018

ORDER

The accused Shri Najim Uddin is present with his learned Counsel.

Prosecution witness numbers 2, 3 and 4 have been discharged after examination-in-chief and cross-examination on behalf of the accused.

On submissions so made, evidence of the prosecution is closed.

As already directed, list the case on **31.07.2018** for examination of the accused under section 313 of the Code of Criminal Procedure, 1973.

Sessions Judge Karimganj Present: Utpal Prasad, AJS Sessions Judge Karimganj at Karimganj

31.07.2018

ORDER

The accused Shri Najim Uddin is present with his learned Counsel.

Statements of the aforesaid accused u/s 313 of the Code of Criminal Procedure, 1973 have been recorded by bringing to his notice the incriminating circumstances obtaining in the evidence and by eliciting his responses thereto. The same has been done in presence of his learned counsel and by putting the questions in Bengali language and then translating the same into English and reading over the same and explaining the same to the accused in Bengali language.

Perused the case record including the evidence of the prosecution and the statement of the accused recorded u/s 313 of the Code of Criminal Procedure, 1973. Also heard leaned Public Prosecutor and the learned Counsel for defence under section 232 of the Code of Criminal Procedure, 1973.

The accused has been charged u/s 366A of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act, 2012 for his alleged involvement in the offences of abduction of minor girl for compelling her to illicit intercourse and for committing penetrative sexual assault on her. Prosecution has, in support of its case, examined 4 witnesses out of 7 enlisted in the charge sheet which includes the victim, the first informant and an independent witness.

From the perusal of the testimony of the prosecution witness number 2, who also happens to be the victim in the case, it is seen that she has not implicated the accused person. She has stated that she herself went out of her house as she

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was in love with him and wanted to marry him. She states that

she was aged 19 at the time of the alleged incident and that the accused had taken her to a relative's house at Kaliganj and had kept her there for 2 days whereafter, the police had recovered her and had brought her to Nilam Bazar police station. She has categorically stated that during her stay in the accused's relative's house, the accused had not misbehave with her and had slept separately. She has stated that after her recovery, the police had got her medically examined and she had narrated the incident to the concerned Doctor.

The Doctor has been examined as prosecution witness number 1 and she has stated that the victim had given the history that she had herself eloped with the accused and that the both of them had stayed as husband and wife, and that the victim had not given any history of injury or assault on her. She has stated that X-ray examination of the victim for determination for her age was advised but X-ray was not done and therefore, the age of the victim could not be ascertained medically. She has stated that in her examination, she had not found any injury on the person of the victim nor had she found any injury in her private parts..

The prosecution witness number 3 is the informant and father of the victim and he has stated that he had seen the accused in his residence and had asked him for a cup of tea but the accused had not agreed and after that, his daughter had gone missing. He states that thereafter, he had lodged the 1st information, and after 3 days, the police had recovered the victim and that after her recovery, he had sent the victim to his relatives house in the State of Mizoram and that he had not asked her daughter anything. The

prosecution witness number 4, who is an uncle of the victim, has deposed that the victim's father had informed him that the accused had taken the victim of away whereafter, the $1^{\rm st}$ information was lodged. He has not stated anything incriminating against the accused.

As neither the victim nor the 1st informant has implicated the accused, the prosecution prayed for closure of evidence stating that the same would not have served any purpose.

Thus, the testimonies, as referred to above, made by the prosecution witnesses do not incriminate the accused, so as to constitute him guilty of an offence even if taken to be true.

The evidence on record, even if unrebutted, fails to show that the aforesaid accused has committed the offences he has been charged with or that he has committed any other offence, and does not require any elaborate reasoning to arrive at an inference of innocence of the accused persons.

As such, invoking the provisions of section 232 of the Code of Criminal Procedure, 1973, I consider it a fit case to record an order of acquittal of the accused without calling him to enter on his defence. Accordingly, the accused Shri Najim Uddin is acquitted of the charge u/s 366A of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act, 2012 and is set at liberty forthwith.

His bail bond(s) and surety/sureties shall, however, stand extended for the next six months from today.

As it has not been concluded that the prosecution witness no. 2 is a victim of any offence, this court does not consider

her entitled to any compensation under section 357/357A of the Code of Criminal Procedure, 1973.

This case stands **disposed of** on contest in the above terms.

Sessions Judge Karimganj