#### IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

### POCSO Case No. 55/2018 U/S 4 of the POCSO Act

Present : Mr. P. Das Special Judge,

Morigaon, Assam.

State of Assam

-VS-

Md. Anuwar Hussain ..... Accused

Date of Charge : 04.01.2019.

Date of Argument : 01.11.2019.

Date of Judgment : 06.11.2019.

#### **Appearance for the Parties**

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

Advocate for the Accused: Mr. A. U. Siddique, Ld. Advocate.

#### <u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 15.03.2018, one Md. Afaz Uddin lodged a case at the Jagiroad Police Station alleging inter-alia that on 10.03.2018, while he and his wife were not at home, the accused person entered into their house and tried to commit improper act upon their minor daughter whereupon, she raised hue and cry leading to collection of neighboring people and then the accused fled away from their house. On the basis of the ejahar, Jagiroad PS Case No. 106/2018, was registered u/s 448/376(2)(i)/511 IPC r/w Section 12 of the POCSO Act.
- **2.** After completion of investigation, charge sheet was submitted against the accused person namely, Md. Anowar Hussain u/s 448/376(3) IPC r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012. Subsequently, vide order dated 04.01.2019, 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. At the trial, prosecution side examined three witnesses including the informant and the prosecutrix. They were cross-examined by the defence.

**3.** Considering the nature of the evidence adduced by these three witnesses, the prosecution evidence was closed, and thereafter, the accused was examined u/s 313 Cr.PC. Defence did not adduce any evidence.

#### 4. <u>POINTS FOR DETERMINATION</u>

Whether the accused Md. Anowar Hussain 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**

- **5.** Heard learned public prosecutor for the State and Mr. A. U. Siddique, learned defence counsel for the accused person. Perused all the relevant materials from the record.
- 6. PW-1 Afajuddin is the informant of the case and father of the prosecutrix. He stated in his deposition that at the time of the incident, his daughter – the prosecutrix was aged about 15 years. He further stated that at the time of the incident he was not at home, but after coming back home, he was told by people that in his absence when nobody was present at home, the accused had entered their house and tried to commit bad act upon the prosecutrix and that upon some people in the neighbourhood raising hue and cry the accused person fled away. He further stated in his deposition that after he came back home, he talked to the prosecutrix and she told him that at the time of the incident the accused had entered their house, caught hold of her hand, whereupon she raised hue and cry and then the woman of the neighbourhood came there and the accused fled away. This witness stated that subsequently, he lodged the instant case in the police station. He proved as Exhibit 1, the ejahar lodged by him and Exhibit 1(1) is his signature thereon. He further stated that during investigation, he submitted one certificate of his daughter – the prosecutrix and that the said certificate was seized from him by the police vide seizure list, which is Exhibit 2 and Exhibit 2 (1) is his signature thereon and that the said certificate was then given back in Zimma to

him. As per the said certificate, the date of birth of the prosecutrix is 28.06.2002. This witness was cross examined by the learned defence and in his cross examination he stated that there was a proposal for marriage of his daughter – the prosecutrix with the accused, from the side of the accused and that later, he also came to know that there was a love affair between them.

- 7. PW-2 is the prosecutrix and she stated in her deposition that the informant of the case is her father and that she knew the accused person who is a neighbourhood person. She further stated that at the time of the incident she was aged 15 – 16 years. The prosecutrix further stated in her evidence that at the time of the incident she was alone at home and her parents were not at home and that at that time, when she was studying, the accused came to their house and that he had kissed her, when one of her aunt saw it and told her father and the aunt also raised hue and cry whereupon the accused went away. The prosecutrix further stated that later on, when her father came home, he had beaten her. The prosecutrix further stated in her evidence that she and the accused had a love affair. She proved as Exhibit 3, her statement before the learned Magistrate and as Exhibit 3 (1), (2) her signatures thereon. The prosecutrix was cross examined by the learned defence and in her cross examination she stated that when she was examined by the police, she stated before the police as instructed by her father, as at that time she was scared. She further stated that while giving her statement before the learned Magistrate also, she stated as instructed by her father, as she was scared. The prosecutrix stated in cross examination that the accused had not forcefully done anything with her. She reiterated that at the time of the incident, the accused had kissed her. However, she also stated that the accused did not commit any sexual act upon her.
- **8.** PW-3 is Md. Fakaruddin. He stated in his deposition that he knew the informant as well as prosecutrix and also the accused person and that all of them were his neighbouring persons. He further stated that on the day of the incident, he was sleeping in his house and at that time, he heard a hue and cry in the house of the informant, which was located about 60 feet from his house. That, thereupon he went to their house and found that at that time the parents of the prosecutrix were not at home. He further stated that the prosecutrix told him that the accused who

is a relative had come to their house asking for a Pan and that she said in a crying way that the accused had committed *Beya Kaam* on her. This witness reiterated the same in his cross-examination.

- **9.** The informant PW-1 stated about hearing from other people that the accused had entered into their house and tried to commit bad act upon the prosecutrix and has also stated that she told him that the accused had caught hold her hand whereupon she raised hue and cry. He has stated about love affairs between the accused and the prosecutrix and about marriage proposal of the accused with the prosecutrix. There are no other implications in the testimony of PW-1 regarding commission of offence upon the prosecutrix by the accused including sexual offence.
- **10.** PW-3 who is the neighbour of the victim family stated that he came to their house after the incident upon hearing hue and cry and that the prosecutrix told him in crying way that the accused committed had act upon her.
- **11.** Both PW-1 and PW-3 are the hearsay witnesses as regards the implications which they have made against the accused.
- **12.** Upon perusing the testimony of the PW-2, the prosecutrix, I find that she stated that at the time of the incident, the accused came to their house and kissed her which was seen by her aunt who raised hue and cry and that later, her father beat her. The prosecutrix has stated about her love affairs with the accused.
- **13.** It is important to note that in her cross-examination, she has stated that she has made her statements before the Magistrate and police upon being instructed by her father and that she was scared at that time. The prosecutrix has clearly stated in her statement that the accused had not done anything forcefully and did not commit any bad act upon her but reiterated about kissing. Therefore, I find that the prosecutrix in her testimony has not implicated the accused regarding commission of any offence, especially sexual offence.
- **14.** In this context, it may be mentioned herein that under the provisions of the Protection of Children from Sexual Offences Act, 2012, for the act of the accused to be an offence of sexual assault or sexual harassment punishable u/s 8/12 of the

Act, the said act of the accused has to be done with the sexual intent. Of course,

what would constitute sexual intent in a given case shall also dependent on the

facts and circumstances of the case. In this case, considering the aforesaid

testimony of the prosecutrix, I am of the considered view that such sexual intent is

missing so as to bring the act of the accused within the ambit of sexual assault or

harassment.

**15.** Consequently, I come to the inevitable finding that the evidence on record is

grossly inadequate to come to any conclusion of guilt of the accused for any sexual

offence and /or any other minor offence, including the offence under Section 4 of

the Protection of Children from Sexual Offences Act, 2012 for which he has been

charged with.

**16.** Accordingly, the prosecution case fails due to lack of any evidence and the

accused is entitled to be acquitted.

ORDER

17. On the basis of the evidence and other relevant materials on record of the

case, the accused Md. Anuwar Hussain stands acquitted. He shall be set at liberty

forthwith, if, not wanted in any other case.

**18.** His bail bonds and sureties stand discharged.

19. A copy of this judgement and order shall be sent to the learned District

Magistrate Morigaon in compliance with Section 365 of the Cr.PC.

**20.** Given under my hand and seal on this the 6<sup>th</sup> day of November, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

### **APPENDIX**

### **Prosecution Witnesses:**

PW-1 : Afajuddin.

PW-2 : Prosecutrix.

PW-3 : Md. Fakaruddin.

## **Defence Witness:**

Nil.

# **Prosecution Exhibits:**

1. Ext. 1 : Ejahar.

2. Ext. 2 : Seizure list.

3. Ext. 3 : 164 Cr.PC statement of the prosecutrix.

## **Defence Exhibits:**

Nil.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

### **POCSO Case No. 55/2018**

### <u>06.11.2019:</u>

Accused Md. Anuwar Hussain 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. Anuwar Hussain stands acquitted. He shall be set at liberty forthwith, if, not wanted in any other case.

His bail bonds and sureties stand discharged.

A copy of this judgement 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