IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Special (POCSO) Case No.45/2017 U/S 457/366 (A)/342 IPC, R/W Section 4 of POCSO Act

Present : Mr. Dhrupad Kashyap Das Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Najrul Islam

..... Accused Person

Date of Charge :- 04.01.2018.
Date of recording evidence :- 19.02.2018.

Date of Argument :- 19.02.2018.

Date of Judgment :- 20.02.2018.

Appearance for the Parties

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

Advocate for the accused:- Mr. U.C. Roy, Ld. Advocate,.

JUDGMENT

1. The prosecution case in brief is that on 29.05.2016, at around 12.00 AM at night, the accused namely, Md. Najrul Islam, S/o Md. Afirudddin of village Silpukhri Adarshagaon, P.S. Mikirbheta under Morigaon district, by taking sharp weapon had illegally entered into the house of the informant and kidnapped his minor daughter with the help of other persons and, thereafter, confined the victim girl in an unknown place.

On 31.05.2016, the informant went to the Mikirbheta PS and lodged an F.I.R. On receipt of the F.I.R., the O.C of Mikirbheta PS registered a case vide Mikirbheta PS Case No.181/16, U/s 457/366 (A)/342/34 of IPC.

After receipt of the same, the investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, drew sketch map of the place of occurrence, seized one school certificate of the victim girl, examined other material witnesses and after recovery of the victim girl, she was medically examined. Thereafter, the I.O. brought the victim to the learned trial Court for recording her statement U/s 164 Cr.P.C. The I.O. during investigation of the case arrested the accused person. Subsequently, he was let off on court bail and the Ld. Court below furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, upon completion of investigation, the I.O. submitted charge-sheet against the above-named accused with allegation of offence punishable U/s 457/366 (A)/342 IPC r/w Section 4 of the POCSO Act. Thereafter, the learned court below committed the case to this Court by finding it to be exclusively triable by this Court. Accordingly, the accused person appeared before this Court. Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record framed charges U/s 457/366 (A)/342 IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused to which he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused person on the eventful day i.e. on 29.05.2016 at about 12 O'clock, at night at village Silpukhri Adarsha Gaon under Mikirbheta PS, committed the offence of lurking house trespass by entering into the house of the informant for the purpose of committing an offence punishable with imprisonment?
- (ii) Whether the accused person on the same day, time and place induced the minor daughter of the informant, to go from her house

- with intent that the said minor girl is likely to be or will be forced or seduced to illicit intercourse with the accused?
- (iii) Whether the accused person on the same day, time and place wrongfully confined the minor daughter of the informant?
- (iv) Whether the accused person on the same day, time and place committed an offence of penetrative sexual assault as defined U/s 3 of the POCSO Act with the minor daughter of the informant?
- 3. In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the father of the victim as PW-1 and the victim girl 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 the ends of justice. The accused declined to adduce defence evidence.
- **4.** I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

5. DISCUSSION, DECISION AND REASONS THEREOF

In this case, it is alleged by the prosecution that on the eventful day the above-named accused person kidnapped the minor daughter of the informant and confined her in an unknown place.

(a) To prove this fact, the prosecution has examined PW-1, Md. Abdul Hasen, he in his evidence stated that, he is the informant of this case and the victim Munni Begum is his daughter. He knows the accused person. At the time of occurrence of the incident, his daughter was about 18/19 years old. The alleged incident took place about 2 years ago. On the date of occurrence of the incident, his daughter eloped with the accused. Thereafter, an ejahar was lodged. After recovery of his daughter, he came to know that, she got married with the

accused person on her own free will. Later on, he also accepted their relationship. He further stated that the case was lodged out of misunderstanding. Ext. 1 is the ejahar and Ext. 1(1) is his signature. The accused person is now his son-in-law. Further, PW-1 stated that he has no objection, if, the accused person is acquitted from the case.

(b) PW-2, Musstt. Munni Begum, stated in her evidence that the complainant is her father. The accused is now her husband. The alleged incident took place about 2 years ago. On the date of occurrence of the incident, she eloped with the accused from her house at her own will. After elopement, her father lodged the case. After few months, she came back to her paternal house and explained to her parents that she eloped with the accused out of love affairs. They got married after elopement. Her father lodged the case out of misunderstanding. Later on, her father accepted their relationship. Now, she is leading happy conjugal life with the accused.

Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. the father of the victim and the victim) examined by the prosecution have not stated anything as regards to the 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 and her father stated that the accused did nothing wrong to her and the case was lodged out of misunderstanding against the accused person and, therefore, the accused person may be released. 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 person Md. Najrul Islam is not found guilty for the offences punishable U/s 457/366 (A)/342 IPC r/w Section 4 of the POCSO Act and as such, he is acquitted and set at liberty.

Judgment is delivered and pronounced in the open Court on this 20th day of February, 2018 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

APPENDIX

A. Prosecution witness

1. PW-1:- Md. Abdul Hasen

2. PW-2 :- Musstt. Munni Begum

B. <u>Defence witness: Nil.</u>

C. Prosecution Exhibit:

D. Defenceexhibits :- Nil.

Special Judge, Morigaon.

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20.02.2018.

Accused person Md. Najrul Islam is present.

Judgment is ready and pronounced in the open Court.

Considering the evidence on record, it is 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 offence punishable U/s 457/366 (A)/342 IPC r/w Section 4 of the POCSO Act and as such, he is acquitted and set at liberty.

Judgment is enclosed in separate sheet.

Special Judge, Morigaon.