IN THE COURT OF THE SPECIAL JUDGE :: :: MORIGAON, ASSAM

Present: Sri S. K. Poddar, AJS

Sessions Judge cum Special Judge

Morigaon, Assam.

POCSO Case No. 41/2017 U/S 448/354 IPC r/w Section 8 of the POCSO Act.

State of Assam

-VS-

Sri Kamal Nath S/o Late Milik Nath R/o Village- Hatibat P.S. – Mikirbheta District – Morigaon,

Assam. Accused

Date of Charge : 06.02.2018.

Date of Evidence : 22.10.2019, 14.02.2020.

Date of Argument : 14.02.2020. Date of Judgment : 14.02.2020.

Appearance for the Parties

Advocate for the State : Mr. A. Kalam, Ld. Special Public Prosecutor.

Advocate for the Accused: Mr. N. U. Ahmed, Ld. Advocate. &

Ms. S. Shah, Ld. Advocate.

JUDGMENT

Prosecution case in brief is that on 12.01.2017, Smti. M. Barman lodged a FIR with the Morigaon Police Station alleging inter-alia that on 11.01.2017, at about 8:30 PM, the accused Sri Kamal Nath entered into her house and gagged the mouth of her minor daughter, the victim 'X' (name

withheld) aged 10 years while she was sleeping on the bed. On the hue and cry of the victim, the informant and others rushed there and found the accused lying under the bed. They took out the accused and handed over him to the police.

- 2. On receipt of the FIR, Morigaon PS Case No. 21/2017 u/s 448/354 IPC r/w Section 3/4 of the POCSO Act, 2012 was registered and investigated into. During investigation, the victim was medically examined and on completion of investigation, the Investigating Officer (i/o) submitted charge sheet against the accused Sri Kamal Nath for trial u/s 448/354 IPC r/w Section 3/4 of the POCSO Act, 2012.
- **3.** It may be mentioned herein that during investigation, on 12.01.2017, the accused was arrested and vide order dated 08.02.2017, he was allowed to go on bail. However, due to jumping bail, accused was again arrested and produced before the Court on 01.09.2018, and was remanded to judicial custody till 07.02.2019.
- 4. On 23.10.2017, charge sheet was laid before this Court and vide order dated 06.02.2018, charges u/s 448/354 IPC r/w Section 8 of the POCSO Act, 2012 were framed and explained to the accused to which he pleaded not guilty.
- **5.** During trial, prosecution side has examined only three witnesses i.e. the Medical Officer, informant and the victim. Considering the nature of the evidence of the witnesses (PW-1 to PW-3), examination of accused u/s 313 Cr.P.C is dispenses with and I proposed to dispose the case by using powers u/s 232 Cr.P.C. without calling the accused to enter into defence.
- I have heard argument of Id. Special P.P. Mr. A. Kalam and Mr. N. U. Ahmed, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

POINTS FOR DETERMINATION ARE:

(I) Whether on 11.01.2017 the accused committed house trespass by entering into the residence of the informant and remained there illegally?

(II) Whether on 11.01.2017, the victim 'X' was subjected to sexual assault/subjected to outraging modesty by the accused?

DISCUSSION, DECISION AND REASONS THEREOF

- **8.** PW-1, Dr. N. Ahmed, the Medical Officer deposed in her evidence that on 12.01.2017, she examined the victim 'X' in connection with Morigaon PS Case No. 21/2017. And found that there was no injury in the private parts of the victim 'X' and there was also no any external injury except mild neck pain. She exhibited the Medical Report as Ext. 1 and her signature thereon as Ext. 1(1). Defence declined to cross-examine.
- 9. PW-2, the victim 'X' deposed in her evidence that presently she is aged about 13 years. On 11.01.2017, at about 9:30 10:00 PM, while she was sleeping in her room, on hearing some noise under her bed, she looked and saw that one boy was sleeping under the bad. On her hue and cry, her parents came there and her father pulled out the boy. Then the matter was informed to police who came there and took away the boy to the police station. On the next day, police took her to the hospital. She could recognize that accused as the boy found under her bed. In her cross-examination by defence, she stated that there was dark inside the room. Initially she could not recognize the boy. She stated that there was hue and cry on their courtyard and a boy was lying there under intoxication. He was handed over to police. She denied the defence suggestion that the accused did not enter inside her house and was not brought out from her house.
- 10. PW-3, Smti. M. Barman, the mother of the victim 'X' as well as the informant of the case deposed in her evidence that, the date of birth of the victim is 15.07.2007. Presently she is a student of Class- VII. On 11.01.2017, at about 9:30 10:00 PM, while the victim 'X' was sleeping in her room, on hearing some noise under her bed she called her to her room and on going there, they saw that one person was hiding under her bed. Thereafter, her husband pulled him out from the bed and on scolding him, neighbours gathered there. The matter was informed to police who came and brought the boy to the police station. On the next day, she lodged the FIR at the Morigaon Police Station. She proved the FIR as Ext. 2. She also recognize that accused is the boy found under the bed of her daughter. In cross-examination, she denied

defence suggestion that she deposed falsely that the accused was found under the bed of her daughter. She stated that on apprehension of the accused, she felt that he was under intoxication and he is a resident of distant village. She also denied the suggestion that while the accused was going under intoxication, he lied in front of their courtyard and for this, they handed over him to police. She admitted that on the suggestion of villagers, the accused was handed over to police and as asked by police, she had lodged the FIR. She further stated that they have already compromised the matter with the accused and she has no objection in acquittal of the accused.

- **11.** From the above evidence on record, let me decide the points formulated. So far age of the victim is concerned, the victim and the informant claimed that at the time of incident, the victim was aged about 13 years. This fact remained unrebutted during cross-examination by defence.
- **12.** From the evidence of the PW-2 the victim, it appears that she deposed nothing against the accused involving him with the alleged offence of outraging her modesty or committing sexual assault upon her. The victim in her evidence-in-chief clearly stated that on 11.01.2017, at about 9:30 10:00 PM, while she was sleeping in her room, on hearing some noise under her bed, she looked and saw that one boy was sleeping under the bad. On her hue and cry, her parents came there and her father pulled out the boy. This part of evidence was supported by PW 3. Though in the FIR, allegation was made regarding gagging of the mouth of her the victim, but during evidence, she did not utter a single word regarding sexual assault or molestation of the victim by the accused. The allegation of sexual assault/outraging modesty of the victim is not proved.
- 13. So far the charge of house trespass is concerned, from the evidence of PW 2 and 3 categorically deposed that on hearing the noise under the bed, victim raised alarm and on this, PW 3 and her went there and pulled out from under the bed. Both PW 2 and 3 identified the accused as the persons found under bed. They denied the defence suggestion that accused being under influence of intoxication, fall down infront of the house of informant and

was handed over to police. The evidence of PW 2 and 3 so far house trespass is concerned remained unshaken and found reliable and trustworthy.

- At this it may be mentioned here that the offence u/s 448 IPC as proved by prosecution is compoundable u/s 320 Cr.P.C by the owner of the house. PW 3, the owner of the house, in her cross-examination admitted that they have already compromised the matter with the accused and she has no objection in acquittal of the accused. Thus this compromise by the informant amount to compounding of the offence u/s 448 IPC.
- 15. Considering the evidence as discussed above, it clear that there is nothing in the evidence of PW-2 and PW-3 against the accused for the alleged offence of outraging modesty and sexual assault as made punishable u/s 354 IPC and Section 8 of the POCSO Act, 2012 and though offence u/s 448 IPC is found to be proved by the prosecution but as the same is compoundable and the PW 3 has compromised the matter with accused, accused cannot be held guilty for the said offence and he deserves acquittal on this count.
- **16.** Considering above discussion, accused Kamal Nath is acquitted from the charges U/S 448/354 IPC and Section 8 of the POCSO Act, 2012 and set at liberty forthwith.
- **17.** The bail bond executed by accused and his surety are extended for another six months from today u/s 437-A Cr.P.C.
- **18.** Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357-A Cr.P.C.
- **19.** Send a copy of the judgment to learned District Magistrate, Morigaon u/s 365 Cr.P.C.
- **20.** Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 14th day of February, 2020 at Morigaon.

Special Judge Morigaon