IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Spl. (POCSO.) Case No.07/2017 U/S 120(B) IPC, r/w Section 4 of POCSO Act

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

State of Assam

Vs.

Musstt.Mallika Begum

..... Accused Person

Date of Charge :- 24.10.2017.

Date of recording evidence :- 02.06.2017& 10.11.2017.

Date of Argument :- 10.11.2017.

Date of Judgment :- 13.11.2017.

Appearance for the Parties

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

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

JUDGMENT

1. The prosecution case in brief is that on 11.03.2015, at around 9.00 AM, when the informant's minor daughter was going to school, the accused person namely, Musstt. Mallika Begum (W/o Golap Ali of village- Boralimari under Bhuragaon PS) by way of enticement took the victim to her house and after entering in the room, she closed the door from outside. After her entry, the accused person namely, Md. Montu Ali, who was inside the house, embraced the victim and committed sexual intercourse forcibly against her wish and thereafter, he fled away from the house. Hence the case.

On 16.03.2015, the informant went to the Bhuragaon PS and lodged an ejahar. On receipt of the F.I.R., the O.C of Bhuragaon PS registered a case vide Bhuragaon PS Case No.52/2015, U/s 448/376 of IPC r/w Section 4 of the POCSO Act.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence, examined the victim as well as other material witnesses and also got the victim medically examined and got her statement recorded U/s 164 Cr.P.C. Thereafter, the I.O. having completed the investigation and having found sufficient materials against the accused person submitted charge-sheet against the above-named accused person for the offences punishable U/s 120 (B) of IPC r/w Section 4 of the POCSO Act, showing her as absconder. Subsequently, she surrendered before this court and she was let off on court bail. Thereafter, this Court finding it to be exclusively triable by this court furnished copies of relevant documents as mandate U/s 207 of Cr.P.C. to the accused person and, thereafter, having heard Ld. Counsel of both sides and basing upon materials on record, this Sessions court framed charge U/s 120(B) IPC r/w Section 4 of the POCSO Act against the accused person, which was read over and explained to the accused person to which she pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused person on the eventful day i.e. on 11.03.2015, in the morning hour, at village Boralimari under Bhurgaon PS, made a criminal conspiracy with one Montu Ali to call the victim girl for certain illegal purpose?
- (ii) Whether the accused person on the same day, time and place committed an offence of penetrative sexual assault upon the victim girl?

- **3.** In this case prosecution has examined 1 (one) CW, who is the Headmaster of Japori Secondary School and the informant of this case as PW-1. 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 defense 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.

DISCUSSION, DECISION AND REASONS THEREOF

5. In this case, it is alleged by the prosecution that on the eventful day, the above-named accused person along with another person forcibly involved the victim girlin an immoral act.

To prove this fact, the prosecution has examined PW-1,who is the father of the victim girl. This witness submitted before the court his daughter is not in a position to depose evidence.

PW-1, Md. Afar Ali, deposed in his evidence-in-chief that he lodged this case about two years ago. The victim is his daughter and the accused person is his neighbor. That, one day while his daughter was going to school, she was kidnapped. However, on the same day evening his daughter was rescued. His daughter was found at the house of Mallika Begum. Then he lodged a case against accused Mallika Begum and Montu Ali. Later on, his daughter was married to somebody else. At the time of incident, his daughter was a matured girl. PW-1 further stated that he does not have any objection against the accused person. The case was lodged out of misunderstanding.

In his cross-examination, PW-1 told that the case was lodged out of misunderstanding. He does not have any objection if, the accused person is released.

Thus, we have found that none of the witness including the most vital witness as PW-1 (i.e. the informant) examined by the prosecution have not stated anything as regards to kidnap and penetrative sexual assault being allegedly committed by the accused with the help of another person.

of the prosecution case remained un-substantiated, as the informant himself stated that the accused did nothing wrong to his daughter (victim) and the case was lodged out of misunderstanding against the accused person and, therefore, he does not have any objection if, the accused person is released. So, we have

Considering the evidence on record, we have found that the material part

found that the most material witness of this case as PW-1did 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 defense 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 is not found guilty for the offences punishable U/s 120 (B)/34of IPC, r/w 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 13thday of November, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

6.

Special Judge Morigaon.

APPENDIX

A. Prosecution witness

1. CW-1 :- Abdul Jalil

2. PW-1 :- Md. Afar Ali

B. Court Exhibit:

Ext. A is the transfer certificate

Ext. B is the compare copy with the original of the admission register.

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

C. Prosecution Exhibit :

D. Defense exhibits :- Nil.

Special Judge, Morigaon.