IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

<u>Sessions (Spl.) Case No.29/2016</u> U/S 417/376 (2) (i) IPC, R/W Section 4 of POCSO Act

Present : Mr. D. K. Das Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Mainuddin

..... Accused Person

Date of Charge :- 05.11.2016.
Date of recording evidence :- 23.10.2017.

Date of Argument :- 23.10.2017.

Date of Judgment :- 24.10.2017.

Appearance for the Parties

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

Advocate for the accused:- Mr. A.U.Siddique, Ld. Advocate,.

JUDGMENT

The prosecution case in brief is that, the minor daughter of the informant aged about 14 years visited the house of her maternal uncle Rafiqul Islam for an outing and she stayed there. On the eventful day i.e. on 22.05.2016, at around 10.00 AM, the accused person by way of inducement took her minor daughter (victim) to his house and confined there. Subsequently, the accused tried to marry her forcefully and when the victim girl refused to marry him, the accused assaulted her minor daughter (victim). It is further alleged that during that captivity her minor daughter was subjected to repeated sexual assaults by the accused.

On 31.05.2016, the informant filed a complaint petitionbefore the court for the aforesaid incident. On receipt of the compliant, the O.C of Mikirbheta PS registered a case vide Mikirbheta PS Case No.188/2016, U/s 417/376/323/34of IPC r/w Section 8 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 before the Magistrate. Thereafter, the learned trial court committed the case to this Court having found it to be exclusively triable by this Court. The accused was produced before the Court, wherefrom, he remanded to judicial custody. 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 417/376 (2) (i)of IPC r/w Section 3/4 of the POCSO Act.Thereafter, this Court furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. to the accused person. At the time of submitting the charge-sheet the accused person was languishing in jail and subsequently, the accused waslet off on Court bail.

Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record, this Sessions court framed charge U/s 417/376 (2) (i) 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 he pleaded innocence and claimed to be tried.

2. Point for determination:

- (i) Whether the accused personon the eventful day i.e. that you on 22.05.2016, at about 10.00 AM, cheated the victim girlX by inducing her to his house with an intention to marry her against her wish and that, such act, caused harm in her (victim) person, body or mind and reputation?
- (ii) Whether the accusedpersonon the same day, time and place committed rape upon the victim X, a minor girl, aged about 14 (fourteen) years?

- (iii) Whether the accused person on the same day, time and place committed penetrative sexual assault upon the victim X, a minor girl, aged 14 (fourteen) years?
- **3.** In this case prosecution has examined 2 (Two) PWs including the most material witnesses of this case, the informant, who is the mother of the victim girlas PW-1 and the victimas 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 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.

DISCUSSION, DECISION AND REASONS THEREOF

- **5.** In this case, it is alleged by the prosecution that on the eventful day, i.e. on 22.05.2016, the above-named accused person by way of inducement took the victim to his house and wanted to marry her against her will and when the victim refused to do so then the accused assaulted her and she was subjected to repeated sexual assaults by the accused.
- (a) To prove this fact, the prosecution has examined PW-1, the mother of the victim girl, who in her evidence has clearly negated the prosecution case as alleged. She told thatshe is the informant of this case and the accused person is her nephew. The victim X is her daughter. The alleged incident took place about 1 year ago. At the time of occurrence of the incident, her daughter (victim) X was 18 years old. On the date of occurrence of the incident, her daughter (victim) X went to the house of her maternal uncle who is the father of the accused. The

accused had an intention to marry her daughter. With regard to this a quarrel took place between her and the accused. Later on, her daughter was married to somebody else. Since the accused wanted to marry her daughter forcefully therefore, she lodged this case. She put thump impression in the complaint petition.

In her cross-examination, she told that Later on, she realized that she lodged the case out of misunderstanding. She also told that she do not know the contents of the complaint petition. It was written by somebody else. Since, she did not agree to that proposed marital relationship therefore she lodged the case against the accused but the case was settled mutually.

(b) PW-2 (Victim X) in her evidence she deposed that the informant is her mother. Sheknows the accused person who is the son of her maternal uncle. The accused wanted to marry her but her mother did not agree to the said relationship. A quarrel also took place between her mother and the accused. As the accused was adamant to marry her therefore, her mother lodged the case against the accused. After institution of the case, shewas married to somewhere else. She also made statement before Magistrate as well as before the Police but shedoes not know the contents thereon.

In her cross-examination, she told that she made statement before the Magistrate as per the wish of her mother. Her mother lodged the case against the accused out of misunderstanding. Their dispute is also settled down between the family members mutually.

Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and PW-2 (i.e. theinformant and the victim) examined by the prosecution have not stated anything as regards to rape 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 mother herself stated that after institution of the case the victim married to somewhere

else and they also stated that the accused did nothing wrong to her and the case was lodged out of misunderstanding against the accused person and it was mutually settled between both the parties 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 personis not found guilty for the offences punishable U/s 417/376 (2) (i)of 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 24th day of October, 2017 under my hand and seal.

Dictated & corrected by me

Special Judge. Morigaon.

<u>APPENDIX</u>

A. Prosecution witness

- 1. PW-1 :- Musstt. Azufa Khatun
- 2. PW-2 :- Miss X
- B. <u>Defencewitness: Nil.</u>
- C. Prosecution Exhibit: Nil.
- D. Defenceexhibits :- Nil.

Special Judge, Morigaon.