IN THE COURT OF THE SPECIAL JUDGE, MORIGAON POCSO Case No. 25/2018

Present : Mr. P. Das

Special Judge, Morigaon.

State of Assam

-VS-

1) Sri Sanjay Verma

2) Sri Krishna Basak @ Krishna Kt. Basak

..... Accused

Date of Charge : 12.12.2018.

Date of Argument : 26.06.2019.

Date of Judgment : 29.06.2019.

Appearance for the Parties

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

Advocate for the Accused :- Mr. P. Pator, Ld. Advocate.

<u>JUDGMENT</u>

1. The prosecution case in brief is that on 17.07.2015 at about 10.00 AM, the accused persons namely, Sanjay Verma and Krishna Basak @ Krishna Kt. Basak, resident of village Bhuragaon under Morigaon District committed rape upon the niece of the informant by way of inducement. It is further stated that since few months the above named accused persons repeatedly committing sexual intercourse with the niece of the informant without her consent. On 17.07.2015, the informant lodged a case before Bhuragaon P.S and accordingly, the O.C. of Bhuragaon P.S. registered the case vide Bhuragaon PS case No. 118/15 U/S 376 (f) IPC r/w Section 4 of the POCSO Act, 2012.

2. After investigation of the case, charge sheet was filed against the accused. Subsequently, vide order dated 12.12.2018, charge were framed against the accused persons u/s 4 of the Protection of Children from Sexual Offences Act, 2012. The charge upon being denied by the accused persons led to commencement of the trial.

3. **POINTS FOR DETERMINATION**

Whether the accused persons Sanjay Verma and Krishna Basak @ Krishna Kt. Basak are guilty of committing an offence punishable u/s 4 of the POCSO Act, 2012?

DISCUSSION, DECISION AND REASONS THEREOF

- **4.** Heard learned public prosecutor for the State and learned defence counsel for the accused person. Perused the relevant materials on record.
- **5.** Section 4 of the Protection of Children from Sexual Offences Act, 2012, punishes the offence of penetrative sexual assault committed upon a child i.e. person below 18 years.
- **6.** In this case, the prosecutrix adduced her evidence as PW-1 and the prosecution side also adduced evidence of 3 more witnesses including the informant. After completion of recording the evidence of the PWs, the accused was subjected to examination as warranted U/s 313 Cr.P.C. The accused declined to adduce defence evidence. Considering the nature of the evidence adduced by the prosecutrix, informant and two other independent witnesses and after hearing the learned Public Prosecutor, the prosecution evidence was closed. PW-1 is the prosecutrix and she stated in her evidence that the informant was her *Bor-deuta* and that she knew the accused Krishna Basak, but she did not know the other accused Sanjay Verma. She further stated that the incident had taken place about four five years back and at that time she was aged 11 years. She further stated that her younger brother used to work in the house of the accused Krishna Basak and in this connection sometimes she used to visit their house. She further stated that on the day of the incident, she had gone to the house of the said accused and then some neighbourhood boys told that

she had done something and beat her up and then lodged this case. She stated that she was taken to the police station and her *Bor-deuta* was called to the police station. That, subsequently her *Bor-deuta* lodged the case in the police station. She further stated that the police had examined her and taken her to the Doctor for medical examination and had also taken her before the Magistrate for recording her statement. She proved the statement as Exhibit 1, where she stated that she had put her thumb impression. In cross examination, the prosecutrix stated that the accused persons had not committed any offence upon her and that on that day, no incident had taken place upon her from the side of the accused persons.

7. PW-2 Samiruddin stated in his evidence that he was the informant of the case and that the prosecutrix was his niece and that he knew the accused persons after the incident. He proved as Exhibit 2, the ejahar lodged by him and his signature thereon as Exhibit 2 (1). He stated that at the time of the incident, he was not present at the place of occurrence and that later he was called to the police station and accordingly he went and that at the police station, he found that some boys were writing the case and were asking the prosecutrix. He further stated that the said boys told him to put his signature and told him that the accused persons had done some bad act with the prosecutrix and so they were brought to the police station. Accordingly, he put his signature on the ejahar as the guardian of the prosecutrix since her father had expired and thereafter, he went back to his house. He further stated in his evidence that the police had examined him in connection with the case and asked him about his relation with the prosecutrix whereupon he had stated that he was her uncle. He further stated in his evidence that later he asked the prosecutrix and she told him that her younger brother works in the house of the accused Krishna Basak and that sometimes she also goes there. He further stated that the prosecutrix also told him that on the day of the incident she had not gone to the house of the said accused. In cross-examination, the informant stated that he put his signature on the ejahar upon being told by the boys who were present in the police station.

8. PW-3 Habibur Rahman in his evidence has stated that on the day of the incident there was some hue and cry at the *chariali* and that the accused persons had come there. He further stated that, he does not know anything else regarding the incident. Similarly, PW-4 Ibrahim Ali also stated in his deposition that at the time of incident he was in his shop and at that time upon hearing hue and cry, he came out of his shop and saw a collection of persons and that he came to know that there was some hue and cry over some girl.

Upon perusing the evidence of the above two witnesses, I find that the testimony of these two witnesses is not helpful to the prosecution as they neither throw light upon the incident nor implicate the accused persons.

- 9. Upon perusing and analyzing the remaining prosecution evidence, I find that the prosecutrix has clearly stated that the accused persons have not committed any offence against her and that day no incident had taken place upon her from the side of the accused persons and thereby completely exonerated them. PW-2 Samiruddin, the elder brother of the deceased father of the prosecutrix has also not implicated the accused persons in his evidence. He has rather stated that upon going to the police station, he put his signature upon being told by the boys present there. Though, he stated that he was told by the boys that the accused persons had done some bad act with the prosecutrix, but same is contrary to the evidence of the prosecutrix. The said aspect of PW-2 cannot lead to any conclusion of the guilt of the accused persons. PW-2 also stated that he put signature on the ejahar upon being told by the boys. PW-2 has also not stated anything regarding commission of any sexual offence upon the prosecutrix or any other related offence. Thus, I find that the evidence of prosecutrix and her uncle (PW-2) do not implicate the accused persons and the said evidence is grossly inadequate to establish any guilt of the accused persons with regard to the charges against them or any other minor penal section.
- **10.** Therefore, on the basis of aforesaid evidence of the prosecutrix, the ingredients of Section 4 of the Protection of Children from Sexual Offences (POCSO)

Act, 2012, with which the accused persons have been charged with in this trial, are not made out.

11. Consequently, the prosecution case fails due to lack of evidence and the accused persons are entitled to be acquitted.

ORDER

- **12.** On the basis of the evidence and relevant materials on record of the case, the accused Sanjay Verma and Krishna Basak @ Krishna Kt. Basak stands acquitted. The accused persons, if in detention, shall be set at liberty forthwith, if not wanted in any other case.
- **13.** Their bail bonds and sureties stand discharged.
- **14.** A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.
- **15.** Given under my hand and seal on this the 29th day of June, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

APPENDIX

A. Prosecution witness

- 1. PW-1:- Prosecutrix.
- 2. PW-2:- Md. Samiruddin
- 3. PW-3:- Md. Habibur Rahman
- 4. PW-4 :- Md. Ibrahim Ali
- B. <u>Defence witness: Nil.</u>

B. Prosecution Exhibit:

- 1. Ext.1 :- The statement of Prosecutrix recorded U/s 164 Cr. P.C.
- 2. Ext.2 :- The ejahar.
- C. Defense witness: Nil.
- D. Defence exhibits :- Nil.

(P Das)

Special Judge, Morigaon

POCSO Case No. 25/2018

29.06.2019:

Accused Sanjay Verma and Krishna Basak @ Krishna Kt. Basak are 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 Sanjay Verma and Krishna Basak @ Krishna Kt. Basak stands acquitted. The accused persons, if in detention, shall be set at liberty forthwith, if not wanted in any other case.

Their bail bonds and sureties stands discharged.

A copy of this judgment 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