IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

POCSO Case No. 20/2019 U/S 363/343/376(3) IPC r/w Section 6 of the POCSO Act

Present: Mr. P. Das

Special Judge, Morigaon, Assam.

State of Assam

-VS-

Sh. Rajib Das @ Papu Das Accused

Date of Charge : 24.09.2019.

Date of Argument : 26.12.2019.

Date of Judgment : 27.12.2019.

Appearance for the Parties

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

Advocate for the Accused: Mr. U. C. Roy, Ld. Advocate.

Ms. T. Das, Ld. Advocate.

JUDGMENT

- 1. The prosecution case in brief is that an ejahar dated 16.02.2019 was lodged by the informant at the Jagiroad Police Station alleging inter alia that his minor daughter was kidnapped by the accused from the road while going to the school whereupon Jagiroad PS Case No. 88/2019, was registered u/s 363/368 IPC and investigation was conducted. After completion of investigation the case was charge sheeted against the accused Sh. Rajib Das @ Papu Das u/s 363/368/376(i) IPC r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012.
- 2. Subsequently, vide order dated 24.09.2019, charges were framed against the accused under Section 363/343/376(3) IPC r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012. The charges being denied by the accused led to commencement of the trial. At the trial, the prosecution side examined the informant and prosecutrix as PW-1 and PW-2 respectively, both of whom were cross-examined.

3. Considering the nature of the evidence adduced by these two witnesses the prosecution case was closed and thereafter, the accused was examined u/s 313 Cr.PC. The defense did not adduce any evidence.

4. <u>POINTS FOR DETERMINATION</u>

Whether the accused Sh. Rajib Das @ Papu Das is guilty of committing offences punishable u/s 363/343/376(3) IPC r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012 ?

DISCUSSION, DECISION AND REASONS THEREOF

- **5.** Heard learned public prosecutor for the State and Mr. U. C. Roy and Ms. T. Das, learned defence counsels for the accused person. Perused all the relevant materials from the record.
- **6.** PW-1 Sri Loni Das is the informant and father of the prosecutrix and he stated in his deposition that at the time of the incident the prosecutrix was aged about 15 years. That, on the day of the incident the prosecutrix had gone to school but did not return till about 2 PM whereupon he started searching for her and that in the evening he came to know from some people that she had eloped with the accused. That, thereafter he lodged the instant case and after lodging of the case the prosecutrix was recovered from someplace in Nagaon district. He further stated in his deposition that after her recovery the prosecutrix told him that she had voluntarily eloped with the accused. He further stated that as the prosecutrix was under aged, therefore they were not in a position to get her married now. During the trial, he proved as Exhibit 1 ejahar lodged by him and as Exhibit 1 (1) is his signature thereon. In cross-examination by the learned defense this witness stated that he had lodged the ejahar without properly understanding the incident at the time of lodging it and that after her recovery the prosecutrix told him that she had voluntarily gone with the accused.
- **7.** PW-2 is the prosecutrix and she stated in her deposition during the trial that the informant was the father and that she knew the accused person. That, at the time of the incident she was aged about 15 years. That, she was having a love affair with the accused and that on the day of the incident she had gone to the house of the relative of the accused and that subsequently her father came there with police and took her

away. The prosecutrix stated in her evidence that the accused did not commit any offence upon her while she was in the house of his relative aunt. She further stated that she was under aged, her parents did not accept the relationship and did not want to get her married to the accused. She proved as Exhibit 2, her statement recorded before magistrate and as Exhibit 2 (1) (2) as her signatures thereon. In cross-examination by the learned defense the prosecutrix stated that on the day of the incident she had gone to the house of the aunt of the accused for roaming (*phuriboloi*). That, when she had given statement before the magistrate she had given so without understanding the incident properly. She further stated that her father had lodged the case on suspicion. The prosecutrix stated that she had voluntarily gone with the accused.

- 8. From analysis of the aforesaid prosecution evidence, the prosecutrix as PW-2 has clearly stated in her evidence that the accused did not commit any offence upon her. There is also no mention in the ejahar about any wrongful confinement and any act amounting to any sexual offence upon her. Though she has indicated herself to be minor, she has stated in her evidence that she had voluntarily gone with the accused and that she had gone to the house of his aunt. In this context, it may be mentioned that atleast some element of inducement and enticement on the part of the accused is also necessary to constitute the offence of taking a minor from lawful guardianship even though the consent of the minor is immaterial. The testimony of the prosecutrix about voluntarily going with the accused has also been corroborated by her father as PW-1.sss
- **9.** Accordingly, in the context of the above prosecution evidence, I am of the considered view and finding that the offences with which the accused has been charged with in this trial or any minor offences are not proved in any way. Therefore, the prosecution case fails and the accused is entitled to be acquitted.
- **10.** Consequently, the prosecution case fails due to lack of any evidence and the accused is entitled to be acquitted.

<u>ORDER</u>

11. On the basis of the evidence and other relevant materials on record of the case, the accused Sh. Rajib Das @ Papu Das stands acquitted. He if in detention, shall be set at liberty forthwith, if, not wanted in any other case.

- **12.** His bail bonds and sureties stand discharged.
- **13.** A copy of this judgement and order shall be sent to the learned District Magistrate, Morigaon in compliance with Section 365 of the Cr.PC.
- **14.** Given under my hand and seal on this the 27th day of December, 2019.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

APPENDIX

Prosecution Witnesses:

PW-1 : Sh. Loni Das.

PW-2 : Prosecutrix.

Defence Witness:

Nil.

Prosecution Exhibits:

1. Ext. 1 : Ejahar.

2. Ext. 2 : 164 Cr.PC statement of the prosecutrix.

Defence Exhibits:

Nil.

Dictated and corrected by me

(P. Das) Special Judge Morigaon, Assam

(P. Das) Special Judge Morigaon, Assam

POCSO Case No. 20/2019

27.12.2019:

Accused Sh. Rajib Das @ Papu Das is 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 Sh. Rajib Das @ Papu Das stands acquitted. He, if in detention, shall be set at liberty forthwith, if, not wanted in any other case.

His bail bond and sureties stand discharged.

A copy of this judgement 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