IN THE COURT OF THE SESSIONS JUDGE, MORIGAON Sessions Case No. 02/2015

Present: Mr. P. Das

Sessions Judge, Morigaon.

State of Assam

-VS-

Md. Saifuddin Islam Accused

Date of Charge : 09.03.2015 & 28.01.2019.

Date of Argument : 22.10.2019.

Date of Judgment : 22.10.2019.

Appearance for the Parties

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

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

JUDGMENT

- 1. The prosecution case in brief is that one Sri Laveswar Nath lodged an ejahar dated 26.02.2014 at the Morigaon PS with an allegation that the present accused Md. Saifuddin Islam by way of inducement kidnapped his minor daughter and thereafter, he confined her in some unknown place and also committed rape upon her against her will. On the basis of the said ejahar, Morigaon P.S. Case No. 75/14 was registered under section 366(A) IPC, which after investigation resulted in a charge-sheet against the present accused U/s 366(A)/376 IPC. Subsequently, upon perusing the case record and hearing the learned counsels, charges were framed vide order dated 09.03.2015 against the said accused under section 366(A) IPC r/w Section 4 of the POCSO Act and also upon perusing the evidence on record an additional charge U/s 419 IPC was framed vide order dated 28.01.2019.
- **2.** At the trial, 4 witnesses were examined including the informant and the prosecutrix and all of them were cross-examined by the defence side. Due to the

nature of evidence, the prosecution evidence was closed at this stage. Thereafter, the accused was examined U/s 313 Cr.PC. The defence side did not adduce any evidence.

3. **POINTS FOR DETERMINATION**

Whether the accused person is guilty of committing an offence punishable u/s 366(A)/419 IPC r/w Section 4 of the POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

- 4. Heard learned Public Prosecutor for the State and the learned defence counsel Mr. U.C. Roy, appearing for the accused person. I have perused the evidence and other relevant materials on record and also considered the submissions of learned counsels.
- 5. PW-1 Sri Laveswar Nath stated in his deposition that he is the informant of the case and that the prosecutrix is his daughter. He stated that at the time of the incident the prosecutrix was aged 16 years. That, on the day of the incident he was in the house along with the prosecutrix and in the evening he came to know that she was missing from the house and thereupon, he lodged the instant case at the police station. He further stated that after 4 – 5 months, the police recovered his daughter and thereupon, when he went to the police station he found the prosecutrix and the accused there. He further stated that after her recovery, the prosecutrix told him that the accused stating his name to be one Rajib Deka, had taken her away with the promise of marriage and that later he came to know from the prosecutrix that the accused was from another caste / religion and that his actual name was different. This witness also stated that the prosecutrix told him that the accused had put Vermillion on her forehead. As part of this evidence, this witness proved the ejahar lodged by him as Exhibit 1 and his signature thereon as Exhibit 1 (1). PW-1 was duly cross examined by the learned defence and in his cross examination, he stated that he had lodged the ejahar in this case a long time after the incident and that the police had not seized any documents from him regarding the age of the prosecutrix and that he had also not given to the police any such documents. He further stated in cross examination that he had heard that there was a love affair between the prosecutrix

and the accused. He stated that at the time of the incident, the age of the prosecutrix was above 18 years. He also stated in cross examination that he did not state before the police that the prosecutrix had told him that the accused stating his name to be one Rajib Deka had taken her away with the promise of marriage and that later he came to know from the prosecutrix that the accused was from another caste/religion and that his actual name or different and that the prosecutrix had told him that the accused had put Vermillion on her forehead.

- PW-2 is the prosecutrix and in her evidence she stated that the informant is 6. her father and that she knew the accused person. She further stated that at the time of the incident she was aged 18 years and that she got introduced to the accused on mobile phone, whereafter she had a love affair with him and that she had gone with him. She further stated in her evidence that since the accused belong to another religion, this was not accepted by her parents and lodged the instant case whereafter, the police brought her back. She stated that after her recovery, the police had taken her to the Doctor for medical examination and also taken her before the Magistrate for recording her statement. She proved the said statement before the Magistrate as Exhibit 2 and her signature thereon as Exhibit 2 (1). The prosecutrix was duly cross examined by the learned defence and in her cross examination she stated that she had love affairs with the accused and pursuant to such love affair, she had voluntarily gone with him and that, she was not taken forcibly by anyone. She further stated that she had given statement before the Magistrate at that time out of fear from her covillagers.
- **7. PW-3** is Smt Dulali Devi and she has stated in her deposition that the informant and the prosecutrix are stated to be her husband and daughter respectively and that she also knew the accused person. She further stated in her evidence that at the time of the incident, her daughter the prosecutrix was aged 18 years. She further stated that on the day of the incident, the prosecutrix went missing from their house and later she came to know that she had gone with the accused person pursuant to her love affair and that when she got caught, her husband lodged the instant case against the accused. This witness further stated in her evidence that after

her recovery, the prosecutrix told her that she had eloped with the accused person pursuant to her love affair. This witness was also duly cross examined by the learned defence and in her cross examination she stated that the prosecutrix had voluntarily gone with the accused and that she was not forcefully taken away by him.

8. PW-4 is Dr Jaya Prabha Bodo, who has stated in her evidence that on 18.06.2014, while she was working as Sr. M&HO, Morigaon Civil Hospital, Morigaon, she examined the prosecutrix in connection with Morigaon PS Case No. 75/2014 u/s 366(A) of IPC and the victim was escorted by a WHG Raju Rajkhuwa and she was examined in the presence of Mrs. Pratibha Patar, female attendant.

Physical appearance:

Height 5 feet 4 inch; weight 58 Kg; teeth – upper 14 lower 14; breast - well developed; auxillary hair – present; Pubic hair – present; Vaginal hymen – open, no injury seen.

No external injuries seen on any part of the body.

No injuries seen on vaginal part or genital canal, or perineum.

X- Ray examination – age of the victim is above 19 years.

Opinion:

- I. No teeth marks or nail marks or other injury seen over any part of the body.
- II. At the time of the examination the girl was pregnant, with last menstruation period 23.02.2014.

She proved as Ext. 3- the Medical Report and Ext. 3(1) as her signature thereon. The pregnancy test report is not mentioned in the medical report. In cross-examination, she stated that the pregnancy test report is not mentioned in the medical report.

9. As stated earlier, the accused Md. Saifuddin Islam is facing trial for charge U/s 366(A) IPC pertaining to kidnapping of a minor girl to force her into illicit intercourse; Section 4 of the POCSO Act pertaining to penetrative sexual assault upon a child below 18 years and Section 419 pertaining to cheating by impersonation.

- **10**. Upon perusing, analyzing and appreciating the prosecution evidence, I find inconsistency in the evidence of PW-1-informant and the father of the prosecutrix regarding the age of his daughter/victim who was stated to be 16 years at the time of incident, but in cross-examination, he stated that the prosecutrix was above 18 years on the date of incident. The testimony of PW-1 have some implications against the accused since he stated that after recovery of his daughter, he was told by her that she was taken away by the accused stating his name to be one Rajib Deka with a promise of marriage and that later he was found to be the present accused. However, the testimony of prosecutrix as PW-2 and her mother as PW-3 takes a different direction. The prosecutrix in her evidence has stated her age to be 18 years at the time of incident and she has clearly stated that she had love affair with the accused, but since he belonged to another religion he was not accepted by her parents and they lodged the case against the accused. In cross-examination, she has stated that she had love affair with the accused and pursuant to such love affair, she had voluntarily eloped with the accused and that she was not forcefully taken by anyone. PW-3 in her evidence has stated that the prosecutrix was aged 18 years at the time of incident and she has also stated about prosecutrix voluntarily eloping with the accused pursuant to love affair and that she was not forcefully taken away. The testimonies of PW-2 and PW-3 who is the prosecutrix and her mother respectively did not state anything about the prosecutrix being taken away by the accused by impersonation.
- 11. None of these witnesses i.e. PW-1, PW-2 & PW-3 have stated about commission of any sexual assault upon prosecutrix by the accused. However, in the evidence of PW-4, the M.O. has stated that there is finding regarding pregnancy with last menstruation period on 23.02.2014. The prosecutrix had a medical examination on 18.06.2014. At the same time there is no medical evidence or otherwise throwing lights on as to whether the accused was responsible for pregnancy of the prosecutrix. As narrated earlier, the prosecutrix herself as alleged victim neither stated in her evidence regarding pregnancy nor any whisper of sexual assault committed upon her by the accused.

12. In the context of the aforesaid evidence, I find the same to be grossly

inadequate to come to any finding of guilt of the accused for kidnapping the

prosecutrix to force her into illicit intercourse. The evidence is also grossly inadequate

regarding commission of sexual assault upon the prosecutrix despite the medical

finding regarding pregnancy. In the context of the evidence of prosecutrix as PW-1

and the mother as PW-2, the charge against the accused U/s 419 IPC by way of

cheating by impersonation also falls through.

13. Thus, I find that the prosecution case here in suffers from non-existent

evidence partly and grossly inadequate evidence partly. Consequently, the prosecution

case fails under the principle of benefit of doubt and accused is entitled to be

acquitted.

ORDER

14. On the basis of the evidence and relevant materials on record of the case, the

accused Md. Saifuddin Islam stands acquitted. The accused, if in detention, shall be

set at liberty forthwith, if not wanted in any other case.

15. His bail bonds and sureties stand discharged.

16. 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.

17. Given under my hand and seal on this the 22nd day of October, 2019.

Dictated and corrected by me

(P. Das)

Sessions Judge Morigaon,

(P. Das) Sessions Judge Morigaon, Assam

APPENDIX

A. Prosecution witness

- 1. PW-1: Sri Laveswar Nath
- 2. PW-2 :- Prosecutrix.
- 3. PW-3 :- Smt Dulali Devi.
- 4. PW-4 :- Dr. Jaya Prabha Bodo.
- B. <u>Defence witness: Nil.</u>

B. Prosecution Exhibit:

- 1. Ext.1 :- The ejahar.
- 2. Ext.2 :- The statement U/s 164 Cr.PC.
- C. Defence witness: Nil.
- D. Defence exhibits :- Nil.

(P Das)

Sessions Judge, Morigaon

Sessions Case No. 02/2015

22.10.2019:

Accused Md. Saifuddin Islam is present along with learned defence counsel, Sh. U.C. Roy.

The accused is examined U/s 313 Cr.PC. It is stated that no defence evidence shall be adduced.

Heard learned PP for the State and the learned defence counsel for the accused person.

The judgment is pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Md. Saifuddin Islam stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.

His bail bonds and sureties stand 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.

Sessions Judge Morigaon, Assam