IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 26 OF 2016

Under Section 376 I.P.C R/W Section 4 of P.O.C.S.O. Act,2012

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.
-versusShahjahan Ali Accused.

APPEARANCE

For the Prosecution : Mr. Lolit Ch. Nath, learned P.P.

For the accused : Aynal Hoque, learned Advocate.

Evidence recorded on : 12.06.2017, 02.07.2018

Argument heard on : 02.07.2018,

Judgment delivered on : 02.07.2018.

JUDGMENT

1. The prosecution case, in brief, is that one Rashida Parbin lodged an FIR alleging that accused Shahjahan Ali, for last one year tried to love her and also tried give her cosmetics and other things but she did not inform those matters to her family members. About 3 months ago, she married to another boy. Then accused Shahjahan Ali informed about their relation in the matrimonial house of the informant and so her husband divorced her. On 06.03.2015, she had gone to the house of her maternal

aunty and there, taking advantage of the absence of the other family members, the accused person committed rape on her. Though accused Shahjahan Ali assured to marry her, but he left the house. Then she reported the matter to her family members and her family members informed the same to Suleman Ali. Suleman Ali assured to hold a meeting, but Suleman Ali and Saddam Hussain, making a conspiracy, kept Shahjahan Ali away from his house.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against accused Shahjahan Ali and Saddam Hussain under section 120(b)/376/121(i)/34 IPC R/W section 4 of POCSO Act, 2012.
- 3. The accused persons appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against the accused Shahjahan Ali person under section 376 I.P.C read with section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial. However, as the case diary does not disclose any material against the accused Saddam Hussain, he is discharged and set at liberty.
- 4. In course of hearing the prosecution has examined as many as 4(four) witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Points for determination**:-

Whether the accused person on 06.03.2015 at noon at Satrakanara 15 No. Seat, within the jurisdiction of Baghbar Police Station District Barpeta,.........

- i) Committed rape on the informant/victim Rashida Parbin?
- ii) Committed sexual assault on Rashida Parbin who is a minor girl?

Discussion, decision and reasons thereof

6. According to the FIR, the alleged date of occurrence is

06.03.2015. The FIR was lodged on 07.04.2015 and the victim was examined the M.O. on 24.04.2015. The M.O. opined that the age of the victim was above 14 years and below 16 years and she did not find any evidence of recent sexual intercourse on the victim.

7. The victim as well as the informant is examined as PW2. She has stated that the accused person is her present husband. They loved each other. But her parents refused to give her marriage with the accused person and performed her marriage with one Idrish. But the accused person informed Idrish and his family members about their love affairs and then Idrish divorced her. Then her father called a bichar against the accused person. But the accused person fled away. Then as per advice of the village people, she filed the case. After one month of filing of the case, the accused person married her. They are now living as husband and wife and out of their wedlock a female child was born. While she lodged the FIR, police produced her before the Medical Officer for examination and also before Magistrate for recording her statement. She made the statement against the accused person to take revenge against him. Except the breaking of marital life in between her and Idrish, nothing was done by the accused person.

In cross examination, she has stated that no such occurrence took place as narrated in the FIR.

- 8. The maternal aunt of the victim Niljan Nessa as PW3 has deposed that the informant/victim is her niece and the accused is her nephew. Now the informant is the wife of the accused. Initially, the informant was married to one Idrish, but as divorced took place in between them, accused married the victim. This case is filed against the accused as he broke up the marriage in between the informant and Idrish. Now, the informant and the accused are living as husband and wife and out of their wedlock, a female child is born. Except this, she knows nothing.
- 9. One Amir Ali, husband of PW3, has deposed as PW4 that the

accused person is his nephew. The victim is the wife of the accused. The victim was married by one Idrish. Prior to that accused and the victim loved each other. The accused person broke up the marriage in between Idrish and the victim. So, to take revenge, the victim lodged the FIR. After one month of lodging the case, the accused married the victim. Now, they are living as husband and wife.

- From the above discussions of the evidences of the 10. prosecution witnesses, it is found that the victim herself has totally negated the occurrence allegedly took place 06.03.2015. She and PW3 & 4 have clearly stated that the victim was married by one Idrish, but prior to that the victim and the accused loved each other. The accused broke up the marriage in between the victim and Idrish and hence the informant/victim filed this case and thereafter got married. The victim has not made a single whisper regarding commission of rape by the accused person on her. Furthermore, though according to the medical evidence, the age of the victim was above 14 years and below 16 years, but the victim has mentioned her age as 22 years. Then in the year 2015, her age was more than 18 years. In her statement, recorded u/s 164 CrPC also she mentioned her age as 17 years. At the time of occurrence she was married woman. Prosecution has not adduced any documentary to ascertain the age of the victim. Therefore, as the victim herself has contradicted her own version regarding the age, and as the medical evidence has also not supported her version, her age is could be ascertained. Therefore, it can not be held beyond all reasonable doubt that at the time of occurrence, the age of the victim was more than 18 years.
- 11. Under the above facts and circumstances, it is clear that the prosecution has failed to bring home the guilt of the accused person for any offence either under section 376 I.P.C or under section 4 of POCSO Act, 2012. Therefore the accused person is acquitted and set at liberty.
- 12. Bail bond executed by the accused person and the surety are

extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.

- 13. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.
- 14. Given under my hand and seal of this Court on this 2nd day of July, 2018.

Dictated & corrected by me.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta (Smti. C. R. Goswami) Special Judge, Barpeta.

Sd/-

A P P E N D I X

(A) **Prosecution witnesses**:

P.W.1 = Medical Officer Dr. Anima Boro,

P.W.2 = Rasida Parbin, the informant,

P.W.3 = Mst Niljan Nessa,

P.W.4 = Amir Ali.

(B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) = Signature of the M.O.,

Ext.2 = Ejahar,

Ext.2(1),2(2),

2(3), 2(4) = Signature of Miss Rashida Parbin,

Ext.3 = Statement of u/s 164 CrPC,

Ext.3(1) & 3(2) = Signature of the victim Miss Rashida Parbin,

- (C) **<u>Defence witnesses</u>**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) Court Exhibits: Nil.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta.